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A Guide to Copyright and NFT Trading

-Republic of Korea-



Foreword

This guide aims to provide information on copyright-related considerations that need to be made when trading non-fungible tokens (NFT), thereby contributing to the forging of an environment where copyrighted works are legitimately circulated.

It deals, from a legal perspective, with copyright issues that may arise during transactions involving copyrighted works, such as works of art, and explains the main aspects related to copyright that NFT sellers, marketplaces, buyers, and rights holders need to know, each according to their respective positions.

However, this guide is not confirmation, in any way, of the safety of NFT trading nor the legal status of an NFT. Also, readers need to be mindful that, despite the contents of this guide, if some other laws and regulations govern NFTs, then those shall apply.

Please make any detailed inquiries to the help desks of the Korea Copyright Protection Agency (KCOPA) or the Korea Copyright Commission (KCC), whose contact information is below. Please be aware that the final decision regarding any copyright infringement is made by the court of law.

The PDF file of this guide can be downloaded from the MCST (www.mcst.go.kr), the KCOPA (www.kcopa.or.kr), the KCC (www.copyright.or.kr) website.

Please use the help desks below for more detailed inquiries.

Inquiries related to copyright protection:

Korea Copyright Protection Agency ☎ +82-1588-0190 / www.kcopa.or.kr

Legal inquiries:

Korea Copyright Commission ☎ +82-1800-5455 / www.copyright.or.kr



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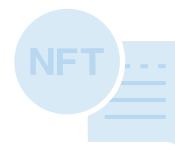
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I. NFTs and Copyright



As soon as it emerged, the concept of **Non-Fungible Tokens (NFT)** spread rapidly throughout the internet world. A work by Banksy, the famous contemporary artist, was divided into 10,000 pieces, then minted into NFTs and sold, while another artist made NFTs out of a photo taken of an artwork and then discarded the original. Not just physical works but digital art, among others, is gaining new value after being linked to NFTs.

Before, the original of a digital file was not considered worthy of being kept because digital files could be infinitely copied and pasted. However, now, unique codes are being issued to those digital files, allowing them to be differentiated. At the same time, blockchain technology is being used to prevent fraud and counterfeiting, opening a market that had never existed before. NFTs cannot be explained entirely from the perspective of the existing legal system alone. There are still many issues to be resolved, including, for example, how virtual assets are to be defined and regulated in terms of property law. However, because NFTs are linked one-on-one with already existing content, they fall, in part, under the jurisdiction of existing laws. Therefore, if NFTs are considered only as a new technology and such legal aspects are overlooked, that may lead to illegitimate minting and trading of NFTs. In one case, a person tried to mint and auction off NFTs from a famous painter's work, but then had to stop because of the resistance from the bereaved family members who held the copyright to the work. There was also an incident outside of Korea where an author demanded that NFTs be erased even though they had already been minted and sold because they were done so without the author's permission. **So, it is essential to look carefully at the copyright law when minting an NFT from a cultural or artistic work.** Just as the author of a painting does not change when you purchase a painting and hang it on your wall, you may end up infringing the author's rights if you mint an NFT based on the work without permission.

This guide explains **who can mint an NFT from a copyrighted work, what copyright issues can arise when minting and selling an NFT, and what precautions should be taken when buying an NFT based on a work**, to prevent copyright infringement during the process of minting and trading an NFT with an underlying copyrighted work. The guide provides explanations from the perspectives of a seller, a marketplace, a purchaser, and a rights holder. If NFTs open a new horizon adding further value to copyrighted works, then it is upon all of us participating in this new market to respect the rights of authors who initially created the value of the work.

1 Definition of major terms

- ♦ A **work** refers to a creative production that expresses human thoughts and emotions. Examples include novels, music, photographs, videos, paintings, academic theses, lectures, and screenplays.
- ♦ Copyright can be divided into **economic rights** and **moral rights**.
 - Economic rights can be assigned or inherited, however, moral rights belong exclusively to the author-inalienable and attributable only to the author.
- ♦ **Neighboring rights** are given to persons who act as narrators, mediators, or deliverers, although they may not have directly created a work. They are rights given to performers (actors/actresses, singers, instrument players), phonogram (record) producers and broadcasters.

	Copyright holder	Neighboring rights holder
Category	Painter, writer, lyricist, composer, etc.	Performer, phonogram producer, broadcasting service provider, etc
Moral rights	<ul style="list-style-type: none"> - Moral rights that the author has over his or her work * Right to make a work public, right to attribution, right to integrity - Among various owners of neighboring rights, only performers have the right to attribution and the right to integrity. 	
Economic rights	<ul style="list-style-type: none"> Rights that protect economic interests generated from exploitation of works * Right of reproduction, right of public transmission, right of performance, right of exhibition, right of distribution, right of rental, right of production of derivative works, etc. 	<ul style="list-style-type: none"> Rights granted to a person who contributes to delivering works to the public * Right of reproduction, right of interactive transmission, right to claim remuneration, etc.

- ♦ **Granting of copyright (the non-formality rule):** Copyright is granted at the time a work is created and is protected regardless of its registration status.
 - ※ Copyright differs from patents and other industrial property rights. In the latter case, rights are granted only if registered (the formality rule).
- ♦ **Legal characteristics of copyright**
 - Copyright is an exclusive right and cannot be exploited without the permission of the rights holder.
 - Economic rights can be assigned to someone else, in part or in whole. (Copyright Act Article 45.1)
 - An owner of economic rights may permit someone else to exploit a work. The person who has gained permission may exploit that work only according to the permitted method and within the specified scope. (Copyright Act Article 46.1 and 46.2)

2 Understanding NFTs

1) What is an NFT?

* Definition of an NFT is still under discussion. To help readers understand it better, this guide will use the most general definition.

♦ NFT (Non-Fungible Token)

- An NFT is a token created through blockchain technology. Each token has a unique value and cannot be exchanged with another token - in other words, it is non-fungible.
- An NFT is composed of (1) a smart contract (a program that runs on blockchain), (2) metadata (asset information that is expressed in an NFT), and (3) digital data regarding the copyrighted work* (included in the form of a link in the metadata**).
- An NFT is also referred to as a “digital certificate of authenticity” in that it can be used to specify digital copyright data and easily identify the owner of the NFT.

* An NFT may be minted from items other than copyrighted works; however, this guide will only deal with works.

** An NFT is usually in the form of a link rather than a direct storing of a digitized form of a work. Therefore, an NFT will most likely include just the metadata of the digitized work and not the work itself, making it difficult for an NFT to be considered a copyrighted work.

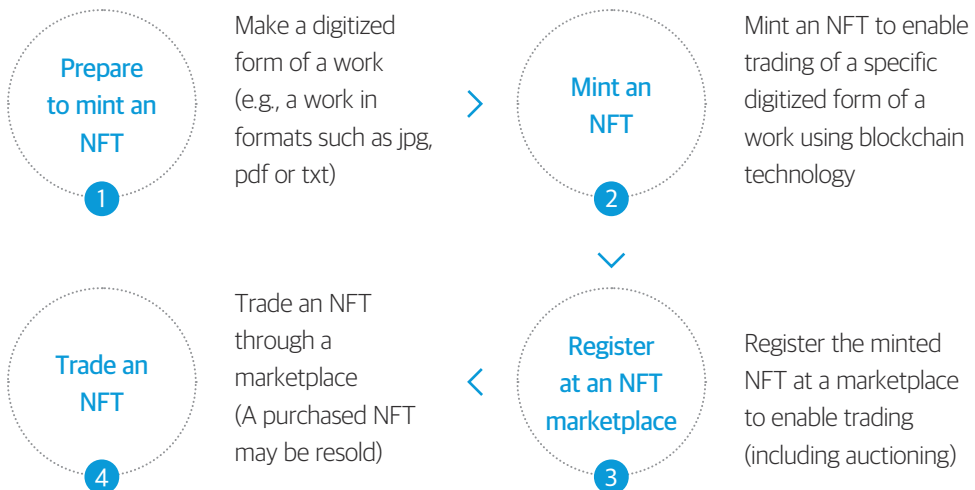
♦ Minting an NFT

- Minting refers to the process of putting non-fungible information on a token.

* The term ‘minting’ in this guide does not correspond to making copies of and distributing works as stipulated in the Copyright Act.

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2) From generating to buying an NFT (example)



II. Precautions to be taken when trading a work in the form of an NFT



1 Seller of an NFT

! Main points

- If you want to mint and sell an NFT, you either have to own the copyright to the work or gain permission from the rights holder (refers to both the owner of economic rights and moral rights).
- Rights holders of digital content such as a record (sound source) include not only the owner of economic rights but also of neighboring rights. Therefore, even if you own economic rights to a work, you still need permission from the owner of neighboring rights before you can mint and sell an NFT.
- If you want to mint and sell a work, you have to clearly indicate what rights the purchaser gains (or whether the purchaser can use it).
- When you sell an NFT, you also need to check the policy of the marketplace before making a deal to verify whether the transaction has any impact on the ownership of the copyright.

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1) When the seller is a rights holder

1 If you are the author and you directly mint and sell an NFT

- ♦ If you are an author, you may freely mint and sell your work in the form of an NFT.
 - However, it is recommended that you register your work linked to the NFT at the Korea Copyright Commission (KCC) before selling the NFT, to make it easier for you to be assumed the rights holder or to prove the amount to claim as compensation for damages, should your copyright be infringed.

[For reference]

If the digital content you sell in the form of an NFT includes not just copyright but other rights such as a portrait right, then you need to get permission from other rights holders to avoid legal disputes when minting and trading an NFT.

2 If you sell an NFT after being assigned economic rights to a work by the author

- ♦ While a holder of economic rights has the right to sell an NFT of a work, the creator (the author) does not and thus must take the following precautions.
 - If you are a holder of economic rights to a work and you want to be able to mint and sell an NFT, you must hold the right to make copies and to interactively transmit the work linked to the NFT.
 - * Right to make copies and the right to interactively transmit a work are necessary because, in the process of minting and selling an NFT, you are copying and uploading the original work (transmitting) to a separate server to make the NFT accessible to purchasers.
 - To avoid disputes regarding ownership of rights, it is recommended that you register your ownership to the KCC before making any NFT transactions as the holder of economic rights to a work
 - Even if you are the holder of economic rights, you can still violate moral rights (rights to attribution - the right for an author to claim him or herself to be the creator of the work) of the author. Therefore, you must indicate the author's name when selling an NFT.
 - If you want to sell an NFT after changing the content, format or title of the underlying work, you need to get permission from the author to make the changes.

Q. If I have been assigned with economic rights, can I make changes to the work before minting an NFT?

A. If you are a holder of economic rights but not the author and have **changed some essential parts of the original work**, then you may be **infringing the author's moral rights (right to integrity)**.

On the other hand, if you make creative additions to the original work, your work may be considered a derivative work. However, if you were not assigned the right to create derivative works from the author but went ahead anyway, you may be infringing the right to create derivative works.

In particular, **the right to create derivative works is not assumed to have been assigned even when a contract assigning all economic rights is signed between the author and the assignee.** (Copyright Act Article 45.2) Therefore, you must check whether you have acquired the right to create derivative works.

Q. When I'm minting an NFT, can I change the information about the copyrighted work (title, name of the author, etc.) that's in the metadata?

A. Even if you have permission from the **owner of economic rights** to mint and sell an NFT, you can still infringe the author's moral rights (rights to attribution and integrity) if you arbitrarily change the title, the real name or pseudonym of the author. Therefore, **if you want to change the information regarding the work, you need permission from the author.**

When an author creates a work, he or she gains economic rights that can be assigned to others and moral rights that cannot be assigned or passed on to others. **Therefore, even if economic rights have been assigned to someone else and that someone else becomes the holder of economic rights, moral rights, such as the right to attribution and the right to integrity, will continue to belong exclusively to the author.**

3 If you are one among several co-authors (and one of many copyright holders) of a work, and you want to sell an NFT of the work

- ◆ As a rule, rights to a joint work can only be exercised when there is an agreement among all authors, meaning that one among several authors to a joint work cannot mint and sell an NFT using digital content without permission from all other authors.

- Therefore, if the digital content in question is a joint work, you need consent from all other authors before you trade an NFT of this work.

- Also, to prevent any dispute regarding ownership of a right, it is recommended that rights to a work underlying an NFT be registered at the KCC before any NFT transaction.

- ▶ Joint work: A copyrighted work where two or more persons participated as authors, and each author's contribution cannot be separated and used independently.

* e.g., An illustrator and a writer jointly create a comic book, and the contribution of one author cannot be separated from that of the other author.

- ▶ Article 48 of Korea's Copyright Act regarding a joint work: ① Author's economic right to a joint work may not be exercised without the unanimous agreement of all the holders of author's economic right, and no holder of author's economic right shall be entitled to transfer by assignment or pledge his/her share of author's economic right without the consent of the other authors. In such cases, each holder may not prevent the agreement from being reached or refuse the consent in bad faith.

4 If a holder of neighboring rights is also involved

- ♦ A neighboring work like a record (sound source) may involve not just holders of copyright but also those of neighboring rights, such as performers (actors/actresses, singers, instrument players) and phonogram producers. Therefore, to trade an NFT of such work, either all types of rights holders need to become the selling party, or you need to get permission from each and every rights holder.

[Example]

“C” films “A” singing a song “xxx” while playing a record. If “B” wants to mint and sell an NFT of the video that “C” took, then “B” has to get permission from the following rights holders.

- ✓ Authors to the song “xxx,” such as the song and lyrics writers and the arranger (copyright holders), as well as the author of the video “C” (copyright holder)
 - ✓ Phonogram producer for song “xxx” (holder of neighboring rights)
 - ✓ Performer “A” who sang the song “xxx,” and the original singer and instrument player for the song “xxx” (holder of neighboring rights)
- ♦ To prevent a dispute with the author, it is recommended that all rights related to the work linked to an NFT be registered at the KCC before getting involved in an NFT trade.

[For reference]

Purchasing the MP3 file of a song sung by singer “A” does not mean you had gained the copyright to that MP3 file but only that you have the right to use the song. Thus, if you want to mint an NFT from the music, you have to get permission from the copyright holders, performers and the record producer related to that song.

2) When the seller has a license from the rights holder

1 Selling an NFT after getting permission to mint and sell an NFT: This is when you have permission from the rights holder to mint and sell an NFT of a copyrighted work (including neighboring works).

- ♦ If you are a seller, you may trade an NFT of a copyrighted work only within the scope licensed by the copyright holder.
 - License here refers to the permission to ① mint and sell an NFT, ② use the copyrighted work during the process of selling an NFT (e.g., interactively transmitting or reproducing the work), and ③ sell the NFT under specific conditions (the scope of rights or license that the purchaser acquires).
 - Even if you, as the seller, have a license from the rights holder, you must still refrain from infringing the author's moral rights during an NFT transaction.

Q. I have a license from the holder of economic rights to use a work. Can I mint and sell an NFT made from this work?

A. Even if you have a license to exploit a particular work, you still need to get a separate license from the holder of economic rights to mint and sell an NFT of that work if you don't already have permission.

This separate license has to allow the licensee to ① mint and sell an NFT, ② use the copyrighted work to interactively transmit or reproduce the work during the transaction and ③ sell the NFT under specific conditions (i.e., the scope of rights or license set by the holder of the economic rights regarding the work that the purchaser will gain through the transaction).

Therefore, only if you have this separate license can you mint and sell an NFT of the work in question, and of course within the scope permitted by the license.

2 Reselling an NFT after purchasing it: You want to sell an NFT that you had purchased.

- ♦ If you had purchased an NFT, and now you want to assign the license to the underlying work that you had gained from the initial seller (rights holder) through an NFT transaction to a third party by selling the NFT, you have to get permission from the rights holder.

► Copyright Act Article 46: ① The holder of author's economic right may grant another person authorization to use the work. ② The person who obtained such authorization pursuant to paragraph ① shall be entitled to exploit the work in such a manner and within the limit of such conditions so authorized. ③ The right of exploitation as authorized under paragraph ① may not be transferred by assignment to the third party without the consent of the holder of author's economic right.

- However, ① if the initial seller (rights holder) had indicated that the license to exploit the work had been transferred to you, the secondary purchaser, when you purchased the relevant NFT, or ② if you got a separate license from the rights holder, then you may use the work.

Q. When I bought an NFT, I got permission from the rights holder to digitally exhibit (interactively transmit) the underlying work. If I want to sell the NFT to someone else, is the right to digitally exhibit (interactively transmit) the work, initially granted by the rights holder, also assigned to the person I'm selling the NFT to?

A. According to Article 46 of the Copyright Act (neighboring rights are stipulated in Article 88 of the Act), the right to exploit a work cannot be assigned to a third party unless permitted by the rights holder. This means that when a person sells an NFT to someone else, the right to exploit the work is not automatically transferred to the purchaser of the NFT.

However, ① if the initial seller (rights holder) indicates that the license to exploit the work will continue to be transferred to whoever buys the NFT during later transactions, or ② if a secondary purchaser of an NFT gets a separate license from the rights holder, then he or she may use the work.

Therefore, it is recommended that the seller (rights holder), when first selling an NFT, indicate the terms and conditions of the transaction - in other words, whether a third party that later re-purchases an NFT has the right to exploit the work in question.

3) If you are selling an NFT of a work in the public domain

- ♦ Work in the public domain can be used freely by anyone.
 - However, even for works in the public domain, rights holders may still exist, particularly if the term of protection has not expired or the works were donated, meaning there may be certain limitations to their exploitation. Therefore, special precautions must be taken when NFTs are being minted from such works and sold.

Q. Would it be okay for me to freely mint and sell an NFT from a work whose copyright protection has expired?

A. In principle, works whose term of protection has expired can be used freely by anyone. However, you need to be careful because if you mint an NFT from a work you did not create and then sell the NFT as if you were the rights holder, you may be **criminally charged with fraud depending on the details of the transaction.**

2 NFT marketplace

① Main points

- NFT marketplaces are recommended to notify sellers and purchasers, through their policy, the basics regarding NFT transactions involving copyrighted works.
- Marketplaces should designate a person to deal with copyright claims and other issues that rights holders, sellers, or purchasers can raise during an NFT transaction and disclose the person's name and contact information (email, etc.).
- NFT marketplaces are also recommended to provide services to enable users to post the contract address, token ID, type of blockchain, and edition number (including the total minted number), ensuring safe NFT transactions.

1) Guide for sellers

- ◆ A marketplace needs to provide guidance to NFT sellers on what precautions need to be taken when trading an NFT so that copyright is not infringed.
- ◆ A marketplace also needs to tell the seller that when he or she wants to sell an NFT of a work, the main aspects of that NFT and the underlying work (date of creation, name of author, terms and conditions of the transaction, total minted volume among others) should be clearly indicated so that the purchaser of the NFT is aware of the contents of the work.
- ◆ A marketplace needs to provide guidance and services that allow sellers to show their copyright registration certificate or input the registration number in the post containing information about the NFT transaction.

[Example]

Guide provided by a marketplace to sellers

- ✓ Do you hold the copyright to the content (artwork etc.) from which you are minting an NFT?
- ✓ If you do not hold the copyright to the content (artwork etc.), did you get permission from the rights holder that you may mint and sell an NFT based on the content?
- ✓ Even if you hold economic rights to the work, you still have an obligation to indicate the author's name and maintain the work's integrity since only the author has moral rights. Are you complying with these rules?
- ✓ When you mint and sell an NFT from a record (sound source), you not only need permission from the holders of copyright but also of neighboring rights. Did you get permission from all of these rights holders?
- ✓ Did you clearly indicate what rights to the work are being acquired by the NFT purchaser and the scope of the copyright license?
- ✓ A purchaser who wants to resell the NFT after purchasing it from the initial seller has to indicate whether the copyright license is also transferred to the secondary NFT purchaser. Are you and relevant parties complying with this rule?
- ✓ Suppose the original file of the copyrighted work is stored externally (such as in an IPFS) in a place not managed by the NFT marketplace. In that case, you must ensure that the file is well maintained and not deleted during the NFT transaction. Do you agree?

- ♦ For secondary sellers, the marketplace needs to guide users ① whether the terms and conditions on using the work set by the initial rights holder also apply to the purchaser, and ② if those terms and conditions do apply and rights are transferred, what they are. ③ If they are not transferred, the seller must inform that the purchaser needs permission from the rights holder to exploit the work.

2) Guide for purchasers

- ♦ A marketplace needs to provide guidance so that purchasers check, before the purchase, the main aspects of the work (type of work, author, terms and conditions of the sale, etc.) and whether the relevant seller is a legitimate rights holder.
- ♦ It should also notify the purchaser that he or she must exploit the work only within the scope and conditions established by the seller or else end up infringing copyright.

[Example]

Guide provided by a marketplace to purchasers

- ✓ Did you check the main aspects (creator, date of creation, terms and conditions of the transaction, total minted volume, etc.) of the NFT content you seek to buy?
- ✓ Did you check whether the original copyrighted work exists in the case of your buying an NFT of the work that's in external storage not managed by the NFT marketplace?
- ✓ Did you check what copyright you will or will not acquire through your purchase of the NFT?

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3) Recommendations for NFT marketplaces

- ♦ A marketplace is recommended to provide functions that allow a seller to post information when selling an NFT verifying that he or she is a rights holder (e.g., copyright registration certificate, registration number, license agreement, links to social media etc.).
- ♦ A marketplace should also provide services so that when a purchaser wants to buy an NFT on the platform, he or she has access to information such as the contract address, the token ID, the type of blockchain used and the edition number (including the total minted volume).
- ♦ Suppose a marketplace directly provides NFT minting services for the benefit of its users. In that case, it should offer tools so that the author, title of the work, and the (link to) original file can be included in the metadata.
- ♦ A marketplace must ensure that false NFTs or NFTs that had infringed copyright during linking are not traded on its platform and notify users on how to make copyright claims or raise other issues. It also needs to designate a person to deal with such claims and cases.

[For reference]

If you run a marketplace that directly mints and sells NFTs, please read the part elaborated under "Seller of an NFT."

3 Purchaser of an NFT

! Main points

- Suppose you are a purchaser of an NFT. In that case, you are recommended to check, before your purchase, the policy of the NFT marketplace and the main aspects of the copyrighted work (conditions of the transaction, etc.) that you will be buying through the NFT.
- You must exploit the relevant work only within the scope and conditions licensed by the seller.
- As a rule, if you are a secondary purchaser of an NFT that's being re-sold, you can only use the underlying work when you have a separate license from the rights holder of the work.

1) Check the legitimacy of the rights holder

- ◆ If you are a purchaser, before buying an NFT, you need to check whether the seller is a legitimate rights holder.
 - ※ You can check whether the seller is a legitimate rights holder by using the information posted by the seller (license agreement, copyright registration certificate, or certificate number*) or by other means.
 - * Can be used to search the KCC registration system (www.cros.or.kr)

2) Check the NFT to be traded

- ◆ If you are looking to buy an NFT, you need to check what you are actually buying, by looking at the details, such as the contract address, token ID, type of blockchain used and the edition number (including total minted volume).
 - In particular, the metadata or the work linked to the NFT may sometimes be deleted. So, if possible, check for any such deletion.

3) Check the terms of the transaction

- ◆ If you are seeking to buy an NFT, you need to check the information posted by the seller as well as the policy of the marketplace to fully understand what rights are being assigned and what are not, as well as the scope of the license.
 - If the seller had indicated what rights are being assigned and the scope of the license, you may exercise those rights or use the work within that scope.
 - If the seller did not indicate the terms of the transaction, but the marketplace policy contains provisions about what the purchaser will be acquiring, then selling an NFT at the marketplace under the established policy will be considered an act of consent to the policy. Therefore, as the purchaser, you can assume those rights to have been assigned to you. However, you may exploit the work and exercise rights only within the scope specified in the marketplace policy.

- If the seller did not indicate the terms of the transaction, nor is there any relevant provision in the marketplace policy, this means that you are not assigned with any of the rights to the underlying work, nor can you exploit the work even though you had bought the NFT. In other words, you have to sign a separate license agreement with the rights holder if you want to acquire the rights to the work or want to exploit it.

Q. I bought an NFT minted from a copyrighted work. Can I use the work in a digital exhibition (interactive transmission) or in my publicity material (printed leaflets, etc.)?

A. Before buying an NFT, you have to check the terms and conditions set by the seller (whether there are rights transferred to the purchaser of the NFT regarding the underlying work). You may use the work within the scope specified in those terms and conditions.

The terms and conditions may be included in the posting regarding the NFT or on a website set up separately by the seller. If the seller uses a marketplace, you can check for relevant information in the marketplace policy.

In short, if the aforementioned terms and conditions specifically mention **that the work may be used for digital exhibitions (interactive transmission) or copied for commercial purposes (used in printed publicity material)**, then you may use the work in your exhibition or publicity material. However, if there is no such indication, you must attain a separate license from the rights holder.

Q. A person selling NFTs (rights holder) distributed digital copies of the underlying copyrighted work in a thumb drive to purchasers of the NFTs. Does this mean that the buyers can freely use the digital copy?

A. Even if the seller had distributed digital copies of the work linked to the NFTs when selling them and the purchaser had legitimately bought the NFTs, the purchaser cannot use the work freely - only according to the terms and conditions (license) allowed by the seller.

4) Precautions when re-selling an NFT

- ♦ If you had bought an NFT but then want to re-sell it, you need to provide guidance on ① whether the terms of the copyright license set by the initial seller (rights holder) also apply to the secondary purchaser and ② if those terms do apply and rights are transferred, you need to convey to the secondary purchaser the details.

4 Rights holder

ⓘ Main points

- If you are a rights holder, and you mint and sell an NFT, you need to clearly indicate what rights the buyer will be acquiring and to what extent the buyer may exploit the work.
- As a rights holder, you may make a copyright claim to the marketplace if you find that your work (or neighboring work) had been used without your permission in minting an NFT and is being traded in the marketplace.
- You may also file an injunction against someone who had illegally minted and sold an NFT using your work (or neighboring work), sue for compensation for damages or file other civil lawsuits, as well as a criminal lawsuit.

1) When the owner of copyright wants to mint and sell an NFT

- ♦ If you, as a rights holder, want to mint and sell an NFT, you must clearly tell the purchaser what rights you are handing or not handing over, and to what extent the purchaser may exploit your work (or derivative work).
- ♦ You also must ensure that the link between the NFT and your work is not broken off and is properly maintained during the NFT transaction.

※ For further details, please refer to the "Seller of an NFT" part.

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2) When someone mints and sells an NFT using your work (or derivative work) but without your permission

- ♦ **Raising a claim:** If, as a rights holder, you find your work (or derivative work) being minted into an NFT and traded at a marketplace without your permission, you can demand that the marketplace take necessary measures such as terminating the transaction.
- ♦ **Requesting an injunction and filing for compensation for damages:** If you are a rights holder and your work ① is being sold at an NFT marketplace without your permission, or ② is being exploited beyond the scope you permitted you can request a court injunction against the infringement and compensation for damages.
 - The amount of compensation for damages would be the loss you had incurred or the profit the infringer had earned by the act of infringing.
 - Suppose you had registered the rights to your work beforehand. In that case, you may claim statutory compensation for damages of up to KRW 10 million (up to KRW 50 million if the infringement was intentional and for commercial purposes) for every piece of work, without having to prove the amount of damages.

- ◆ **Filing a criminal lawsuit and seeking punishment:** You can file a criminal lawsuit against the copyright infringer.
 - As a rule, copyright infringement is an offense prosecutable only subject to a direct complaint from the rights holder. You maintain the right to pursue a lawsuit only up to 6 months from the day you become aware of the infringement.
 - However, infringement for profit-making purposes or habitual violation is not subject to a direct complaint from the rights holder, nor is there a statute of limitations. A law enforcement authority can thus initiate an investigation upon becoming aware of the offense and punish the perpetrator.
- ◆ **Settling a dispute through mediation:** You can use the mediation procedure provided by the KCC to settle a copyright dispute quickly and at a low cost.
 - Mediation refers to a procedure in which a panel consisting of copyright experts induces an agreement among disputing parties to help them settle their dispute quickly. The mediation fee is only KRW 10,000 to 100,000, and the case is closed within three months.
 - An infringer can also apply for mediation - not just the rights holder. Under certain circumstances, the expert panel may decide to make an ex-officio decision within reasonable boundaries, thereby providing speedy relief.

[For reference]

- ▶ **In-person mediation application (Visit KCC or send by post)**
5F, 107 Huam-ro, Yongsan-gu, Seoul, Korea (Postal code 04323)
- ▶ **Online mediation application**
Go to the KCC website (<https://www.copyright.or.kr>) and press,
[Portal]- [Mediation]-[Guide to mediation]-[Guide to application process.]
Then press "Go to online application."

III. Understanding copyright



1 Copyright

1) What is a work?

- ♦ A **work** is a creative production expressing thoughts or emotions of humans. Copyright protects expressions but not ideas.

Work	<ul style="list-style-type: none"> - Literary works, such as novels, poems, theses, lectures, speeches, and screenplays - Musical works, photographic works, cinematographic works - Artistic works, such as paintings, calligraphy, sculptures, etchings, applied art, and crafts - Architectural works, such as buildings, models, and design blueprints - Diagrammatic works, such as maps, charts, design layouts, sketches, and models - Computer programs
Work not eligible for protection	<ul style="list-style-type: none"> - The constitution, laws, treaties, ordinances and rules - Resolutions and decisions, such as court adjudications, decisions and rulings

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2) What is copyright?

- ♦ Copyright is a set of exclusive and monopolistic rights over a work created by an author and consists of **moral rights** and **economic rights**.
 - **Moral rights** protect the author's reputation and personal interests.

Right to make public	The right to decide whether or not a work should be made public
Right to attribution	The right to indicate the real name or pseudonym of the author on the original work or on its copy, or on the medium through which the work was made public
Right to integrity	The right to maintain the integrity of the title, the format and the content of his or her work

- **Economic rights** protect the author's right to receive financial remuneration for his or her work.

Right of reproduction	The right to fixate a work, temporarily or permanently, on a tangible object through methods such as printing, photography, copying, audio or video recording, or downloading, or to remake the work in a tangible form
Right of public performance	The right to make a work public through means such as staging, playing an instrument, singing, reciting, screening or replaying a live performance, phonogram or broadcast
Right of public transmission	Right of broadcasting One of rights to transmit to public. The right to transmit sound or image, or sound and image, so that the public may receive it at the same time
	Right of interactive transmission One of rights to transmit to public. The right to make works, etc. available for the public so that the members of the public may access the work at the time and place of their own choice (includes transmission)
	Right of digital sound transmission One of rights to transmit to public. The right to transmit sound in digital form, initiated at the request of the members of the public for the purpose of having the public receive the transmission simultaneously (excluding interactive transmission)
Right of exhibition	The right to display or post original artistic, photographic or architectural works or their reproductions to allow the public to freely view the works
Right of distribution	The right to assign or rent to the public original works or their reproduction with or without any remuneration. * However, the right to distribute a work cannot be claimed when the work or its copy had been traded under permission from the owner of economic rights.
Right of rental	The right to rent out a work, for profit * Right to rent applies only to commercial phonograms or commercial computer programs and thus does not apply to renting out books or artistic works.
Right of production of derivative works	The right to create another unique work by, for example, translating, compiling, reforming, remaking, or video-filming an original work, and also includes the right to use such derivative work

- **Comparison between moral rights and economic rights:** Economic rights may be assigned or passed on as an inheritance to another person; however, moral rights are inalienable, belong only to the author and cannot be assigned to someone else.

- ♦ Copyright is granted when a work is created and does not require any procedure or formality for it to be granted (Non-formality principle).
- ♦ **Term of protection for economic rights**
 - Economic right is guaranteed during the author's lifetime and 70 years after his or her death, and for joint works, until 70 years after the last author's death.

3) Attribution of copyright

- ♦ **The creator principle**
 - The rule is that the creator of a work, in other words, the person who directly made an expression or performance, be considered the author and hold all rights.
- ♦ **Joint work**
 - A joint work is where two or more authors jointly create a work that cannot be separated according to each author's contribution. Multiple creators together own the copyright.
- ♦ **Exception: Work made for hire**
 - An exception to the creator principle is a work whose rights all belong to a corporation or organization that employs the person who had created the work. If ① the employer had taken the initiative and planned the work and ② a person in an employment relationship ③ had created the work as part of one's job and ④ the work was made public in the name of the employer (a computer program is not required to be made public), then ⑤ the employer holds all rights as the copyright owner, unless stated otherwise in the employment rules or contract.

4) Neighboring rights

- ◆ Neighboring rights are rights that neighbor or are related to copyright. They are given to persons who may not have directly participated in creating a work but had helped its interpretation or delivery as narrators, intermediaries or deliverers.

Copyright	Neighboring rights	
Moral rights	Performers ¹	Phonogram producers ²
<ul style="list-style-type: none"> - Right to make public - Right to attribution - Right to integrity 	Moral rights	Economic rights
	<ul style="list-style-type: none"> - Right to attribution - Right to integrity 	<ul style="list-style-type: none"> - Right of reproduction - Right of distribution - Right of rental - Right of interactive transmission - Right to remuneration for phonogram producers from broadcasting service provider - Right to remuneration for phonogram producers from digital sound transmission service provider - Right to remuneration for phonogram producers from performers using commercial phonograms
Economic rights	Economic rights	Broadcasting service providers ³
<ul style="list-style-type: none"> - Right of reproduction - Right of performance - Right of public transmission - Right of exhibition - Right of distribution - Right of rental - Right of production of derivative works 	<ul style="list-style-type: none"> - Right of reproduction - Right of distribution - Right of rental - Right of performance - Right of broadcasting - Right of interactive transmission - Right to remuneration for performance through broadcasting service provider - Right to remuneration for performance through digital sound transmission service provider - Right to remuneration for performance using commercial phonogram 	Economic rights
		<ul style="list-style-type: none"> - Right of reproduction - Right to make simultaneous broadcasts - Right of performance

¹ Rights of performers: Rights granted over a performance given by a person expressing a work through acting, dancing, playing an instrument, singing, narrating, reciting or other artistic means, or by making expressions in other similar ways (including a person who conducts, directs or supervises a stage performance)

² Rights of phonogram producers: Rights granted to a person who makes an overall plan and takes charge of producing an original phonogram

³ Rights of broadcast service providers: Rights granted over a broadcast made by a person/organization engaged in broadcasting

2 Copyright and property ownership

- ◆ Property ownership refers to the right to use, profit from, and dispose of a property. It is essentially different from copyright, which are intangible exclusive rights over works.
 - Therefore, even if you had gained ownership over a tangible property containing copyright, you did not acquire copyright, meaning that to be able to use the work, you have to check your license or the scope of economic rights assigned to you.

[Example]

When you buy a book, you purchase the ownership of a tangible object - the book - but not the book's copyright.

Type	Nature of the right	What the rights cover
Property ownership	Exclusive rights	Tangible object (The physical form of the book)
Copyright ownership	Exclusive rights	Intangible object (Expression of idea or thought of the author contained in the book)

3 How to use copyright

1) Assigning economic rights and licensing

- ◆ All or a part of economic rights (right to make copies, right to interactively transmit a work, etc.) may be assigned.
 - Unless otherwise stated in a special agreement, the right to create derivative works is not assumed to be included in an assignment of rights. However, for computer programs, the right to derivative works shall be deemed to have been assigned as well, unless otherwise stated.
- ◆ If you are an owner of economic rights, you can license another party to use your work.
 - Thus, a person who has gotten your permission to use a work may exploit it according to the method and within the conditions you had permitted. However, this person may not re-assign these rights to a third party without your permission. (Copyright Act Article 46)

2) Transferring and licensing neighboring rights

- ◆ Neighboring rights, excluding moral rights, of performers may be transferred, in part or in whole, to another person, just like economic rights.
- ◆ Neighboring rights are licensed by owners of those rights.
 - Therefore, if you have a license from the owner of neighboring rights, you must use the relevant record, performance, or other neighboring work only according to the licensed method within the specified scope.

	Is the work you want to use protected by the Copyright Act?		
Type of work	Not a work, a work not protected by law, or a work whose term has expired	Work protected by Copyright Act - literary, artistic, musical or cinematographic works, etc.	
	(Copyright Act) Article 2.1, Article 7, Article 39, etc.	(Copyright Act) Article 4, Article 10	
▼			
	Are you allowed to use the work without permission from the copyright owner?		
Purpose and method of use	▼	Works covered by exceptions and limitations to copyright, or by fair use provision, or works allowed to be used freely (e.g., donated works)	Works that have to be licensed to be used (to be copied, interactively transmitted, performed, etc.)
		(Copyright Act) Article 23~Article 37, etc.	(Copyright Act) Article 11 ~Article 22, etc.
▼			
License	▼	▼	Check with the copyright owner and get license (contract, agreement, etc.)
			(Copyright Act) Article 45, Article 46, etc.
▼			
Use	Okay to be used (Check for possible violation of other laws)	Comply to terms and conditions of use and other obligations when using the work (e.g., Indicate the author's name)	Use within the scope and under conditions permitted

4 Effects of copyright registration

- ◆ **Presumption of validity**
 - If you are an author of a work and you have registered your name, and the date your work was created and made public, what you have registered will be legally presumed to be as such.
 - ※ However, if you register your work one year from the date of creation, the work will not be presumed to have been created on the registered date.
- ◆ **Opposing power**
 - If you register any change in ownership of rights, then you gain the “power to oppose” a third party regarding what has been registered.
- ◆ **Statutory damages**
 - When copyright has been infringed, the rights holder may claim statutory damages without having to prove the extent of the damages and the amount of compensation. (Up to KRW 10 million per work. Up to KRW 50 million if the infringement was for-profit and intentional.)

[For reference]

▶ In-person mediation application (Visit office or by post)

Korea Copyright Commission, 5F, 107 Huam-ro, Yongsan-gu, Seoul, Korea (04323)

Korea Copyright Commission, 1F, 19 Chungui-ro, Jinju-si, Gyeongsangnam-do, Korea (52852)

▶ Online application

Go to the online application portal (<https://www.cros.or.kr>) and choose a registration type after pressing the tab [Apply for registration]

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5 Limitations to economic rights

- ◆ While the Copyright Act protects the rights of authors and owners of copyright, it also imposes limitations on economic rights to promote fair use of works.
 - Therefore, you may use works freely without the permission of the rights holders if those works fall under the scope of limitations to economic rights.
- ◆ Copyright Act

<ul style="list-style-type: none"> - Article 23 (Reproduction for Judicial Proceedings, etc.) - Article 24 (Use of Political Speech, etc.) - Article 24-2 (Free Use of Public Works) - Article 25 (Use for the Purpose of School Education) - Article 26 (Use for News Reporting) 	<ul style="list-style-type: none"> - Article 27 (Reproduction, etc. of News Articles or Editorials) - Article 28 (Quotation from Works Made Public) - Article 29 (Public Performance and Broadcasting for Non-Profit Purposes) - Article 30 (Reproduction for Private Use) - Article 31 (Reproductions, etc. in Libraries, etc.)
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- Article 32 (Reproduction for Examination Questions)
- Article 33 (Reproduction, etc. for the Visually Impaired, etc.)
- Article 33-2 (Reproduction, etc. for the Hearing Impaired, etc.)
- Article 34 (Ephemeral Sound or Visual Recordings by Broadcasting Organization)
- Article 35 (Exhibition or Reproduction of Works of Art, etc.)
- Article 35-2 (Temporary Reproduction in Course of Using Works, etc.)
- Article 35-3 (Incidental use, etc.)
- Article 35-4 (Reproductions, etc. in cultural facilities)
- Article 35-5 (Fair Use of Works, etc.)
- Article 36 (Use by Means of Translation, etc.)
- Article 37 (Indication of Sources)

6 Legal liability for copyright infringement

1) Criminal liability

1 Infringement of economic rights

- ◆ Copyright Act Article 136.1.1 (infringement of rights to make copies, to perform, to transmit to public, to exhibit, to distribute, to rent out, or to produce derivative works, etc.)
 - Imprisonment with labor for up to five years or a fine of up to KRW 50 million, or both

2 Infringement of the author's moral rights and defamation of the author

- ◆ Copyright Act Article 136.2.1
 - Imprisonment with labor for up to three years or a fine of up to KRW 30 million, or both

3 Making a work public under a false name

- ◆ Copyright Act Article 137.1.1.
 - Imprisonment with labor for up to one year or a fine of up to KRW 10 million

2) Civil liability

- 1 If you are a rights holder and your moral or economic rights have been infringed, you may file an injunction against the infringement or request the disposal of material made from the act of infringement or any other necessary measures. (Copyright Act Article 123)
- 2 As a rights holder, you may also claim compensation for damages against a person who had infringed copyright intentionally or as a result of negligence. (Copyright Act Article 125 or 126). In principle, you bear the burden of proof regarding the amount to be claimed as compensation for damages. However, the law also contains legal provisions regarding the assumption of damages and statutory damages, which recognize a certain amount of damages. Also, if the infringement was against registered copyright, you may be able to argue negligence.

A Guide to Copyright and NFT Trading

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