

United States Senate

WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

June 9, 2022

The Honorable Kathi Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Ms. Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Ave, S.E.
Washington, D.C. 20559

Dear Director Vidal and Register Perlmutter,

We write you today as the Ranking Member and Chairman of the Senate Committee on the Judiciary Subcommittee on Intellectual Property (IP). As the leaders of this Subcommittee, and as Senators from States that focus on innovation, we take great interest in the continued development and use of emerging technologies. This includes considering how best to secure intellectual property rights for emerging technologies and how to assess what impact these technologies might have on intellectual property rights.

Recently, the relationship between intellectual property rights and emerging technologies has come to the global forefront in the context of artificial intelligence (AI), which has prompted healthy debate and raised legal questions related to whether or not an AI can and should be considered an inventor of a patent. However, we write you today regarding another interesting and increasingly popular emerging technology – non-fungible tokens, also referred to as NFTs.

NFTs are already in global use today and their adoption continues to grow since their relatively recent introduction. NFTs can be found in nearly all spheres – from academia to entertainment to medicine, art, and beyond. Thus, it is imperative that we understand how NFTs fit into the world of intellectual property rights – as said rights stand today and as they may evolve as we move into the future.

Therefore, we request that your two agencies undertake a joint study to address the following list of non-exclusive considerations. We invite you to further build upon this list.

- (1) What are the current applications of NFTs and their respective IP and IP-related challenges?
- (2) What potential future applications of NFTs do you foresee and what are their respective potential IP challenges?
- (3) For current and potential future applications of NFTs:

- a. How do transfers of rights apply? How does the transfer of an NFT impact the IP rights in the associated asset?
 - b. How do licensing rights apply? Can and how can IP rights in the associated asset be licensed in an NFT context?
 - c. In what way does infringement apply? What is the potential infringement analysis where an NFT is associated with an asset covered by third party IP? Or where the underlying asset associated with an NFT is owned by the NFT creator and infringed by another?
 - d. What intellectual property protection can be afforded? What IP protection can be afforded to the NFT creator? What if the NFT creator is a different person or entity from the creator of the associated asset?
 - e. How else does 17 U.S.C. § 106 apply?
- (4) What are current and potential future uses, internal and external to your agencies, for using NFTs to secure and manage IP rights?
- (5) How do current statutory protections for copyright, such as the DMCA, apply to NFT marketplaces and are those protections adequate to address current infringement concerns?

In undertaking this study we urge you to consult with the private sector, drawing from the technological, creative, and academic sectors.

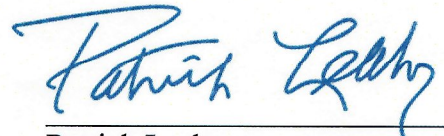
Your prompt attention to this matter is greatly appreciated. Please confirm receipt of this letter and advise whether or not you will undertake the study by July 9, 2022. Please complete the study by no later than June 9, 2023.

Please do not hesitate to contact us should you have any questions.

Sincerely,



Thom Tillis
United States Senator



Patrick Leahy
United States Senator



July 8, 2022

The Honorable Patrick Leahy
Chairman
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy and Senator Tillis:

Thank you for your letter of June 9, 2022, requesting that the United States Patent and Trademark Office (USPTO) and the United States Copyright Office (USCO) conduct a joint study to examine various matters related to intellectual property that have arisen from the growth in the use of non-fungible tokens. As requested, we write to confirm our receipt of your letter and to advise that we will indeed conduct the study.

The USPTO and the USCO have had preliminary discussions on next steps and on how to best consult with stakeholders about this topic. As we move forward, we would be glad to provide your offices with updates.

Again, thank you for your letter. Please do not hesitate to contact us should you have any questions about this study.

Sincerely,

Kathi Vidal
Under Secretary of Commerce for Intellectual
Property and Director of the United States
Patent and Trademark Office

Shira Perlmutter
Register of Copyrights and
Director of the United States
Copyright Office