

Art & Cultural Property Law

NEWSLETTER EDITION 1 – MARCH 2024



KINGSLEY NAPLEY
WHEN IT MATTERS MOST

Welcome to the first edition of the KN Art & Cultural Property Law newsletter, which has been prepared by our team of specialist lawyers.

Art and cultural property law is an exciting and constantly developing area, covering a wide range of issues. At Kingsley Napley, we have developed a specialist cross-departmental offering, including experts in civil fraud, criminal litigation, AML compliance, data protection and intellectual property rights. These newsletters will reflect that. In this inaugural edition, covering important developments during 2023 and the first part of 2024, we highlight fines issued to art market participants by HMRC and an important case on copyright rights relating to AI-generated images. We also share our insights into a new warning from the NCA on the use of art storage facilities for criminal purposes and the increasing attractiveness for thieves of data in the art world – and much more.

The contents of this newsletter are for information only, and must not be relied on as legal or professional advice. For further information or advice on any of issues we have written about here, please speak to your usual KN contact, or [visit this page](#) to contact the specialist Art & Cultural Property Law team.

Thank you to Úna Campbell, Corine Cheong and Phil Taylor for their help in preparing this newsletter.



Nicola Finnerty
Partner



Melanie Hart
Partner

Key Statistics

30

AMPs received an AML compliance or registration penalty from HMRC in Q1 2023 (excluding minor penalties)

52,000+

Stolen works of art listed on INTERPOL's database

95%

of NFTs created from 2021–22 are now worthless

12 million

images alleged to have been scraped from Getty's database by just one generative AI tool

Key Acronyms

- AML – Anti-money laundering
- AMP – Art market participant
- CPS – Crown Prosecution Service
- FATF – Financial Action Task Force
- HMRC – His Majesty's Revenue & Customs
- MLRs – The Money Laundering Regulations 2017 (as amended)
- NCA – National Crime Agency
- NFT – Non-fungible token
- POCA – Proceeds of Crime Act 2002
- SFO – Serious Fraud Office



AML training update for the art market

On Wednesday, 18 October 2023, Kingsley Napley AML specialists Nicola Finnerty and Gemma Tombs presented an online seminar on 'Understanding Money Laundering Regulations in the Art Market.'

Among other topics, the seminar covered how an 'art market participant' is defined under the MLRs, submission of Suspicious Activity Reports to the NCA, the risk-based approach to AML, and practical case studies to identify and handle suspicious activities. A recorded version of the seminar is now available to MBL members.



Anti-money laundering

HMRC: Art market fines

In July 2023, HMRC published a list of 240 supervised businesses that faced fines amounting to £3.2 million for violating the UK MLRs in the second half of 2022. In addition to those listed by name, fines totalling in excess of £200,000 were handed down to a further 179 businesses for various breaches in the period in question.

Notably, AMPs found themselves featuring more prominently than in previous lists, though they constitute only a fraction of the sectors overseen by HMRC: the agency is also responsible for the AML supervision of high-value dealers, estate agents, letting agencies.

While the number of AMPs and their fines were comparatively lower than those other sectors, the majority of penalties – which ranged from £5,000 to £13,350 – were incurred for late registration. This is something which would be easy for AMPs to avoid. 10% of the 200 fines imposed on other sectors resulted from implementation breaches, again mostly relating to late registration, with penalties ranging from just over £1,000 to over £1 million. It seems the art market is therefore not alone in ensuring simple AML compliance processes are in place.

Some AMPs may be reluctant to voluntarily disclose their lack of compliance by making a late registration. However, doing so allows HMRC to exercise discretion and potentially reduce fines by up to 50%, with further reductions for prompt payment.

[HMRC press release](#)



Analysis: NCA warns of AML risk in art storage sector

By Gemma Tombs, Legal Director, Criminal Litigation

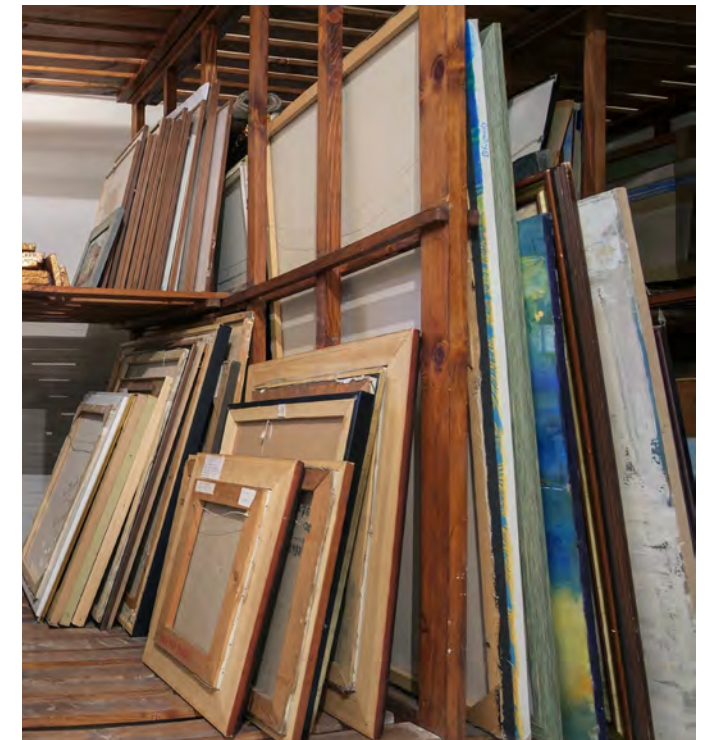
January 2024 saw the UK government's AML taskforce issue an amber alert on '[Financial Sanctions Evasion, Money Laundering and Cultural Property Trafficking Through the Art Storage Sector](#)'. This alert, warning that specialist artwork storage facilities – which often allow users tax benefits – are being used as a means to launder the proceeds of crime and evade Russia-related sanctions, shows the focus of law enforcement on the UK art market has not wavered since 2021 when AMPs were brought within the remit of the AML regulated sector and HMRC's supervision.

Many art businesses choose to voluntarily adhere to the higher standards of the regulated sector but for those inside the perimeter compliance is mandatory and they must pay careful attention to this alert and to guidance issued by HMRC and other authorities; not only is it a formal requirement when undertaking their risk assessment¹ but a court must also consider the extent to which a business followed relevant guidance when determining if they committed a criminal offence.²

Aimed at the art storage business sector but, in reality, encompassing much of the art market as whole, the purpose of the alert is to raise awareness of the new ways in which criminals are seeking to launder the proceeds of their crimes. It is also a timely reminder of the real risks posed by the ever-increasing number of sanctioned individuals who are looking for ways to circumvent prohibitions on dealing with their finances and assets.

The NCA warns artwork storage operators to conduct appropriate and regular due diligence checks – at onboarding stage and also periodically thereafter – "to prevent individuals such as Russian oligarchs that use these specialist facilities to store art as an investment or as a store of value for tax benefits."

The purpose of the alert is to raise awareness of the new ways in which criminals are seeking to launder the proceeds of their crimes.



A risk-based approach dictates that art businesses should assess the extent to which they are at risk given the services they offer, their customer base and the countries they operate in. To this end, the alert identifies various key indicators that art businesses must have on their radar:

1. Changes in client circumstances.
2. Attempts to transfer artwork or cultural property ownership to a family member, close contact, business associate or other intermediary.
3. Attempt to sell artwork or cultural property quickly, or move it to another jurisdiction.
4. Regular payments from an unclear source.
5. Use of front or shell companies, or complex corporate or trust structures where the UBO is unclear.
6. Use of financial services to acquire, sell or ship artworks or cultural property in and out of specialist storage facilities.

It is crucial that businesses then go on to consider the questions they should be asking and the information they should be obtaining about not only potential clients but also the controls they have in place to identify when red flags arise further into a transaction or long-standing business relationship. This is the crux of the 'preventative action' that the alert is encouraging the art market to undertake.

[NCA / NECC amber alert](#) (PDF download)

¹ Regulation 18(2)(a) of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

² Regulation 86(2)(b) of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Civil litigation

Austrian Supreme Court overturns previous decision and ends lengthy battle over sculptor's estate

The famed sculptor Franz West left a dying wish to separate his art creations from his broader assets and to bequeath his art to the Franz West Private Foundation. According to the West family's lawyer, Christoph Kerres, the foundation was established by West while in hospital five days before he died and shortly before the administration of medication.

The legal proceedings were initiated by West's widow, Tamuna Sirbiladz, against the foundation shortly after Franz West died in 2012. She claimed that she and her children were entitled to the ownership of West's art work. Consequently, the Viennese court ruled that the paperwork for the creation of the Franz West Private Foundation was missing standard language, and that the artistic estate should be inherited by West's widow and children.

However, the Austrian Supreme Court recently overturned this prior ruling. The Court concluded that all of West's art work should be donated to the Foundation. This decision designates the late Anne Gutjahr, as West's sister and his legal successor, previously ordered for her brother's art work be transferred to the Foundation, before her death in March 2021.

Unresolved issues persist regarding whether West's children are entitled to a share of West's assets, which may include a share in the value of the artworks currently held by the foundation. Notably, West stipulated in his will that if his widow and children contested his donations to the private foundation, they would lose their entire inheritance.

[The Art Newspaper](#)



Russian billionaire loses claim that Sotheby's conspired in alleged art fraud

In 2015, Russian oligarch Dmitry Rybolovlev accused Swiss art dealer Yves Bouvier of inflating the cost of art transactions that he facilitated for Rybolovlev (totalling over \$2 billion) by \$1 billion. Among the transactions that Rybolovlev complained about was his acquisition of Leonardo da Vinci's Salvator Mundi for \$127.5m (despite the fact that he went on to sell it for a record \$450.3m in 2017, making it the most expensive artwork ever sold at auction). Bouvier asserted that he was not acting as Rybolovlev's agent and advisor in the deals, and was free to charge clients as he saw fit. The parties finally reached a confidential settlement in December 2023.

However, Rybolovlev continued to pursue a parallel case against Sotheby's auction house in the US. He alleged that Sotheby's Head of Private Sales had colluded with Bouvier, altering valuations to justify extortionate mark-ups that Rybolovlev was allegedly charged in respect of Magritte's Domane d'Arnhem, Klimt's Water Serpents II, Modigliani's Tete sculpture, and da Vinci's Salvator Mundi. The three-week trial unmasked much of the internal workings of Sotheby's business, particularly the opaque private sales that contribute significantly to all of the major auction houses' revenue. However, the jury only took one day to dismiss the claim, seemingly agreeing with Sotheby's argument that Rybolovlev's real dispute was with Bouvier, and not the auction house (whose position was that it had no knowledge of Bouvier's alleged deception, and made no profit from it).

Sotheby's attorney's closing argument contained a useful (if aggravating, for Rybolovlev) summary of basic precautions that Rybolovlev failed to take, but ought to have done. Over the 12 years that he bought works from Bouvier, Rybolovlev failed to carry out reasonable due diligence on the pieces he bought; never established a formal agent/principal relationship with Bouvier so as to establish a fiduciary relationship; nor did he confirm the details of whom the works were bought from, and on what basis Bouvier acquired them before selling them on.

[ART news](#)

To find out more about our civil disputes practice, including civil fraud and investigations, [click here](#)



Criminal fraud

Auction house director arrested for £3.2m roman coin fraud

London auction house director Richard Beale was arrested in New York in January for allegedly falsifying ownership histories of ancient coins, including one commemorating Julius Caesar's assassination.

Beale, owner of Roma Numismatics Limited, and Italian coin dealer Italo Vecchi, a consultant specialist at Roma Numismatics, are accused of fabricating ownership records for two coins sold in 2020. Vecchi allegedly sold two rare coins to Beale between 2013 and 2014 without provenance, including the "Eid Mar" coin, celebrating Caesar's assassination, and the "Sicily Naxos" coin from 430 B.C. Both coins were listed in 2020 auctions with falsified provenance, claiming to be from the collection of the Baron Dominique de Chambrier.

The Eid Mar coin sold for £3.2 million, setting a record for the highest price ever paid for an ancient coin, while the Sicily Naxos coin sold for £240,000. Beale is accused of purchasing five other coins from a convicted antiquity trafficker that were looted from the Gaza Strip in 2017.

Beale is charged with grand larceny, criminal possession of stolen property, conspiracy, and scheme to defraud. His next court appearance is scheduled for May. In February, the Manhattan District Attorney's Office returned the Sicily Naxos coin to Italy, along with other antiquities valued at nearly \$2.5 million. The coin, seized at JFK airport in 2013, was among items offered for sale by a known trafficker and smuggled into New York.

[The Observer](#)



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New Act increases criminal liability risk for companies, and restricts scope of strategic litigation

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) received Royal Assent on 26 October 2023. Under section 199 of ECCTA, a 'large organisation' will be criminally liable where it fails to prevent a person associated with it from committing a fraud offence intending to benefit (directly or indirectly) the organisation or its clients.

It is a defence for the organisation to have reasonable prevention procedures in place at the time of the offence (or to show that it was not reasonable in all the circumstances to expect it to have any such procedures in place).

Here, a large organisation is a corporate that has two or more of:

- Turnover of more than £36 million
- Balance sheet total of more than £18 million
- Number of employees of more than 250

A person is associated with a corporate if they are an employee, agent or subsidiary or "otherwise performs services for and on behalf of the body". This is the same principle as found in key bribery and tax evasion laws. Relevant fraud offences currently include cheating the public revenue and statutory theft and fraud offences.

Before the new provisions come into force, large organisations will need to put reasonable fraud prevention procedures in place which are proportionate to their size and risk profile and in line with official government guidance. This has not yet been published, but is expected in the second quarter of 2024. The law will come into force after an implementation period of four to six months after its publication.

Away from the criminal sphere, ECCTA also introduced rules empowering judges in civil court to dismiss cases that constitute a "strategic lawsuit against public participation" (a SLAPP). These are claims, or threatened claims, without legal merit intended to intimidate and suppress the airing of

legitimate issues or criticism. The ECCTA enables a claim to be dismissed where the claimant's intention is (broadly) to restrain the defendant's right to freedom of speech, where the information relates to economic crime (a broad label) and where the publication of that information would be in the public interest. Although yet to be tested, this is an important development that the art world will need to bear in mind.

To find out more on the topic of criminal fraud, white collar and financial crime, [click here](#)

Details of our reputation and media team, who can advise on the impact of the anti-SLAPP provisions, [are here](#)

Data breaches and data protection

Analysis: What art thieves are really after...

By Ellie Fayle, Media Associate, Dispute Resolution

For many, the most valuable commodity that comes to mind in the context of the art world is, understandably, the art itself. But art heists, whilst headline-grabbing when they do happen, are rare outside of Hollywood because art is so difficult to steal, sell on, or ransom. And yet, with increasing frequency, art world institutions are becoming the victims of sophisticated heists – it's just not art that the criminals are after. They are targeting data.

Auction houses, museums and galleries are treasure troves for hackers – not only do they frequently deal in significant amounts of money, but they also hold huge amounts of personal data about clients, employees and visitors. The use of 'ransomware' – which encrypts key systems, rendering them inoperable until a ransom is paid – is particularly prevalent, and is often combined with threats to publish sensitive information held on those systems.

The British Library is still struggling to recover from a sophisticated ransomware attack in October last year, which not only compromised the personal data of users and employees, but which also prevented the library from facilitating access to its collection of 170 million items for months. In December, a US 'museum software solution' company was targeted by a ransomware attack that left many of its clients across the US unable to access their online collections systems.

Other data breaches are also a serious issue for the art world. In 2023, Christie's auction house accidentally disclosed exact GPS coordinates in the metadata of photographs of artworks submitted for review by potential clients, potentially exposing the exact location of valuable artworks to criminals and fraudsters. And in the course of an ongoing US copyright claim, Midjourney AI (a US generative AI company) has been confronted with a leaked internal list of 16,000 artists' names allegedly used (without their consent) to train its AI, which could cause difficulties in defending the claim.



Preparing for, or responding to, incidents like these can be very difficult – particularly for publicly funded institutions in the face of sustained budget cuts and limited resources. Even the most well-funded and well-prepared organisations are increasingly at risk from cyber attacks. The UK's National Cyber Security Centre has issued a warning about how generative AI is expected to exponentially increase the global ransomware threat over the next two years. And even the most sophisticated protection cannot completely remove the risk of human, or machine, error.

The core question, then, is less "what to do if a cyber incident happens?", and more "how can we prepare for when a cyber incident happens?"

1. Invest in proper training for staff on how to handle data and how to spot a potential attack (especially since many start with a phishing email).
2. Prepare a comprehensive incident response and recovery plan for attacks and breaches – keep it updated and ensure that staff are trained to follow it.
3. Have in place appropriate cyber insurance.
4. Obtain specialist advice immediately in the event of an incident. Tackling the actual loss or disclosure of information is obviously a priority, but there will also be legal and regulatory obligations to consider, as well as reputation and PR considerations.
5. Do not underestimate the importance of communication – both internal and external. Poor messaging to staff or the public can make the situation immeasurably worse.



Financial sanctions

Sanctions imposed on art collector accused of financing Hezbollah

Renowned art collector Nazem Ahmad, owner of masterpieces by Picasso, Antony Gormley, and Andy Warhol, was subjected to UK Treasury sanctions in April 2023 over allegations of financing the Lebanese militant group Hezbollah. Ahmad, a diamond and art dealer, faces charges in the US for purportedly using his art collection to launder money for Hezbollah. In the UK, the Treasury has frozen all his assets, including his extensive art collection, and prohibited British artists, galleries, and auction houses from engaging with him or six associated companies.

Ahmad, along with eight co-defendants, including his son and daughter, has been accused of completing art and jewel transactions worth \$160 million since 2019 in defiance of US Treasury sanctions. The UK's enforcement of counter-terrorism powers against Ahmad aligns with his classification as a suspected financier of Hezbollah, a designated terrorist group by the UK government since 2019.

The charges involve utilising the art sector, known for discretion and privacy protection, to shelter and launder money for terrorism. Art transactions allow the movement of funds across borders discreetly, with the subjective nature of art values enabling price manipulation. The global value

of the antiquities, art, and cultural object market reached \$65.1 billion in 2021, as reported by the FATF.

The Treasury Minister in the House of Lords, Joanna Penn, emphasised proactive defence against alleged terrorism funders, and asserted that the measures taken would enhance the UK's economic and national security. Ahmad's assets, including his art collection, have been frozen in the UK to prevent further financial support for Hezbollah.

Ahmad's alleged involvement in funding Hezbollah dates back to 2016, with the US Treasury imposing sanctions against him in 2019. The recent indictment in the US reveals that Ahmad and his co-defendants relied on a complex network of business entities to obtain valuable artwork and diamond-grading services from US sources while concealing Ahmad's involvement.

While the location of Ahmad remains unknown, an unnamed suspect linked to the US investigation has been arrested in the UK. Ahmad, who had previously denied connections to financing Hezbollah, now faces legal consequences on both sides of the Atlantic. The case underscores the vulnerability of the art market to illicit financial activities and the importance of international cooperation in addressing such crimes.

[The Guardian](#)

Intellectual property rights

Analysis: THJ v Sheridan – the end of museums monetising their digital collections?

By Ellie Fayle, Media Associate, Dispute Resolution

The Court of Appeal's recent decision in THJ v Sheridan has been seized on as the death-knell for museums monetising their digital collections by asserting copyright over photographic reproductions of out-of-copyright works.

It is easy to see the appeal for institutions hoping to maximise their revenue generating potential. Taking an unnamed UK national museum as an example, a licence to

use a single image of an 18th Century painting in a limited-edition book can cost upwards of £60. Admittedly, there has been a significant shift towards museums making their collections available online for free, the Rijksmuseum having set the trend in 2012 by making more than 700,000 images freely accessible. But for many, the ability to assert copyright over 2D reproductions of 'public domain' artworks is central to their efforts to generate income – not least, to compensate for visitor numbers failing to reach their pre-COVID heights.

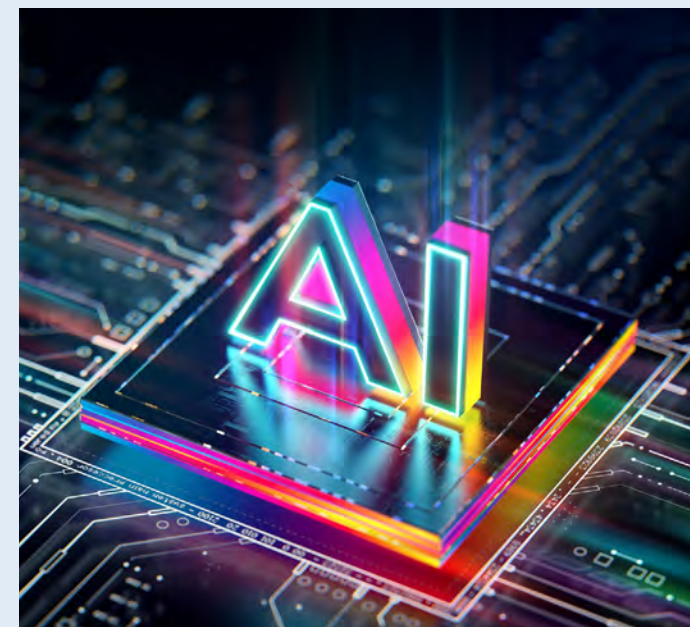
Therefore, it should be comforting for cultural heritage organisations that this case did not actually change the law – it simply clarified it.

Broadly, the underlying dispute concerned the breakdown of a partnership between a software developer and a former trader. The key outcome from the appeal is that it clarified the correct test to be used in determining whether the simplistic charts produced by the developer's software were sufficiently original so as to enjoy copyright protection. Instead of the UK's historic, less stringent "skill and labour" test, the correct test is that the work should be the "author's own intellectual creation" – a higher standard, derived from the 2009 European Infopaq case.

The fact that the simplistic charts in question were found to meet this higher test demonstrates how generous the threshold is. This case did not concern photographic reproductions of artworks, but there is good reason to conclude that a similar reasoning would apply – not least, given the judge's comment that "even a simple portrait photograph" might satisfy the test. The limit of the originality test was already broadly understood to mean that works would not meet the threshold where, "the content of the work is dictated by technical considerations [...]" which leave no room for creative freedom". This judgment simply re-affirms that understanding.

The question for museums remains whether the reproduction of an out-of-copyright artwork is sufficiently the product of the photographer's creative choices, rather than being dictated predominantly by technical necessity. Where a choice crosses over from technical to creative is, as yet, unsettled. However, the creation of high-quality, accurately colour-matched and properly lit images unquestionably requires a skilled and experienced hand, so it is more likely that such images will enjoy copyright protection. For a simple scan of an artwork, it is considerably less likely.

That being said, THJ v Sheridan may have provided a valuable lifeline, given its suggestion that even a work with a low degree of creativity may still enjoy copyright protection.



The consequence would simply be that the protection is correspondingly narrow, "so that only a close copy would infringe." Since the majority of images are licensed for inclusion as carbon copies in books, broadcasts or academic works, this could just be sufficient.

THJ Systems Limited & Optionnet LLP v Daniel Sheridan & Sheridan Options Mentoring Corporation [2023] EWCA Civ 1354 – [Judgment on BAILII](#)

Can AI-generated images be protected from infringing copyright in the UK?

On 16 January 2023, Getty Images brought claims against Stability's image generation AI, Stable Diffusion, alleging primary and secondary infringement of its IP rights (copyright, database rights, trademarks and passing off) by using its human-made image as data inputs for the purposes of training and generation of images.

Stable Diffusion, Stability's new open-source AI image generator, enables its users to create novel images trained on Getty's own image library. Getty found social media posts and YouTube videos consistent with the alleged acts in the UK. It argued that Stable Diffusion infringed its trademark by reproducing its watermark in some of its images – such as blurring or tarnishing the distinctive 'Getty Image' watermarks. In the earlier proceedings in the US, Getty alleged that Stability had illicitly copied more than 12 million images from its database without authorisation, along with captions, metadata and other products such as videos. Getty Images sought for damages up to \$150,000 for each infringed work, with a potential cumulative value of \$1.8 trillion. Getty Images CEO Craig Peters commented that "AI-generated content won't be added to Getty Images content libraries, which will be reserved for real people doing real things in real places".

Getty brought proceedings in the UK on the basis of where members of Stability's development team lived and worked, while the CEO of Stability is confident that "no Stability employee based in the UK has ever worked on developing or training Stable Diffusion" as reported by the Telegraph. Stability sought for summary judgment to strike out the claims at High Court. However, the High Court Judge rejected the application to strike out both primary and secondary infringement claims and affirmed that a full trial is needed to adjudicate both claims.

Getty Images (US) Inc and other companies v Stability AI Ltd [2023] EWHC 3090 (Ch) – [Judgment on BAILII](#)

Digital assets

Analysis: The risks and opportunities raised by NFTs

By Chris Recker, Senior Associate, and Phoebe Alexander, Associate, Dispute Resolution

In 2021 – 2022 the furore around NFTs reached its peak, with sales reaching billions of dollars. Since then, however, the market has significantly slumped, leading to reports towards the end of 2023 that up to 95% of NFTs created during that period were now worthless (despite a limited revival in 2023).

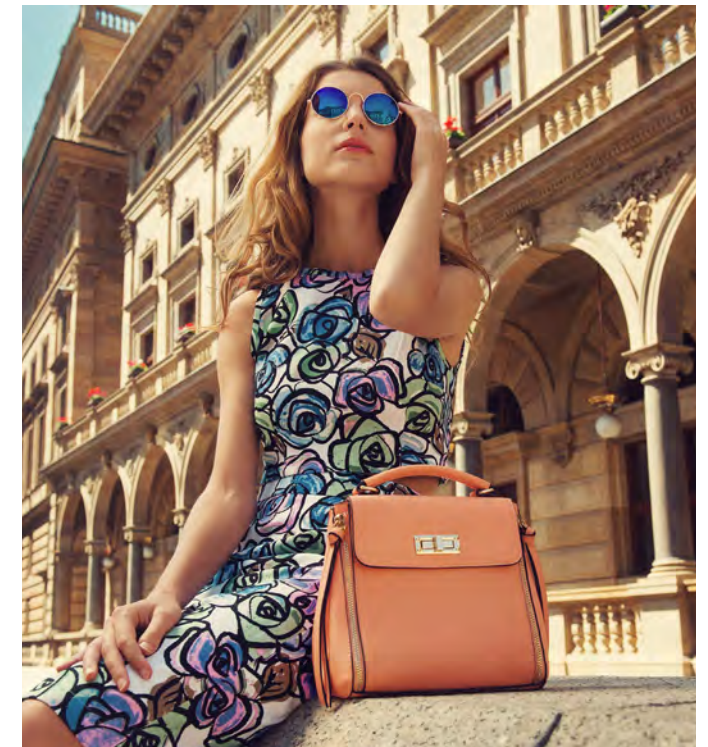
Nevertheless, the NFT market is projected to be worth around USD 232 billion by 2030. As such it continues to provide opportunities to a range of artists. The question is, since the crash of the NFT market hey-day, is there still value for artists in tokenising their work? If so, what are the issues to be aware of for artists and buyers?

NFTs can afford an artist greater control over artistic works by circumventing conventional platforms like ticket sites, streaming platforms and record labels. An NFT can be traded by any person in any place as long as they can access the internet-based marketplace and interact with that marketplace with their own digital asset address or wallet. In theory, this disrupts the notion of an elitist (or 'legacy') art world which is the premise of the wealthy and famous. The wider implications are significant – as concepts like 'tokenisation' may allow an artist to fractionalise and sell a piece of art (and by extension also grant access and exposure to the art market, particularly for expensive paintings, to the wider public).

In addition, artists can use NFTs to raise capital through release of limited and exclusive collectibles, or entitlement to royalty payments. One of the big trends with NFTs is what added value (transferrable to future owners) is attributable by the NFT to the holder (which is often centred around being part of an exclusive community). Artists can also use NFTs to sell concert tickets, meet and greets, or virtual experiences – these are known as 'real world' NFTs. In 2022, The Amazons released 100 limited edition NFT boxsets of their latest album. The idea was that fans would receive a digital and physical 'bandpass' to the album. The project sold out.

Intellectual Property

Although the pros are clear, and tempting, artists should be aware of the potential disputes which can arise from the sale and purchase of NFTs (and the future use of any work produce or re-produced in the NFT). Intellectual property is a particular area to be aware of due to the potential for



misuse of an artist's IP. This is because ownership of an NFT does not necessarily confer rights of ownership over the work itself – in the majority of instances, the NFT confers rights over a digital form or derivative, but not the original work. In addition, in some cases, the actual artist alone may not have the right to sell or reproduce the IP in the original artwork. In the case of musical works, for example, a record label may own some of the rights. The smart contract in place will often govern whether rights to the digital or original asset are conferred with sale of the NFT. However, in many cases, the smart contract remains silent and this brings with it the risk for disputes about what is actually be transferred or acquired. At its most basic, and in the absence of express terms within the smart contract, the owner of an NFT may only have rights to hold, transfer or sell that NFT.

Finally, the minting of an authorised NFT can constitute an infringement of the rights of a third party. Readers may have heard of the well-publicised case of *Hermes v Rothschild*, in which an NFT artist minted the MetaBirkin bag. It was found by a Manhattan jury that the NFT infringed Hermes' trademark rights. The development of IP protection strategies in the digital world and metaverse is an important and developing topic.

Fraud

Fraud is also a crucial issue to be aware of when selling or trading in the digital asset space. The primary risk of fraud is on the purchasers and sellers – particularly relating to the cyber security risks around the use of any digital asset addresses that they control. In addition, several quite sophisticated frauds have developed in relation to NFTs, for example 'rug-pulling'. This is when, having heavily advertised

and created anticipation around an NFT (for example, promising the creation of value by the development of a wider project or for external community benefits to be conferred on holders), a developer ceases work on the project and effectively 'pulls it' from the market once funds are received from investors (often rendering the purchased NFTs as having little value, and less value than what was anticipated). One such example is the creator of the 'Undead Apes Society' NFT project, who was charged in January 2024 with offences after announcing a false partnership with another NFT project (Stoned Ape Crew) apparently to increase anticipation and therefore the floor price of the NFT series, before exiting with the funds raised.

Even if an artist themselves is not involved in the fraud, the inference of fraud can cause reputational damage to a project.

Regulatory

One of the interesting avenues not often considered (once an artist has decided that they would like to mint and sell NFTs) concerns the regulatory treatment of doing so. The position is different in many jurisdictions – but the focus generally tends to be on two aspects: (1) the treatment of the token itself and (2) the treatment of the marketplace within which it is being created, sold and transferred.

A full summary of the regulatory perimeter (and all risks) in the UK is beyond the scope of this article. However, generally speaking, the focus is on identifying whether or not the NFTs being created can be construed as 'securities' or e-money (which would bring them within the financial services regulatory perimeter in the UK – and also introduces other risks around their promotion). In addition, those who are carrying out certain activities concerning the creation of the token, the operation of any exchange business or offering custody services may need to register with the FCA for anti-money laundering supervision. Ultimately, careful thought and advice is needed on the structure of a project (and due diligence should be carried out on the third parties that are helping on those aspects to ensure that they are also complying with their own regulatory duties).

Conclusion

What is apparent is that there does appear to still be room in the market for NFTs as a mechanism for the exploiting of value concerning their works. However, there are risks associated and specialist advice should be taken as part of considering those options.

Proceeds of crime

£220,000 worth of Banksy art seized in POCA investigation

Banksy's artwork, "Grappling Hook," valued at over £220,000, has been seized by Gwent police in Wales as suspected proceeds of crime in March. The sculpture, part of a political exhibition at The Walled Off Hotel in Bethlehem in 2017, features a military-grade grappling hook with a depiction of Jesus being crucified. It was auctioned in 2019 for £93,750. Two other Banksy pieces, "White Tower" (£1,750) and "Monkey Queen" (£13,750), have also been seized in connection with a criminal investigation into a 35-year-old man from Ebbw Vale.

The artworks were initially seized in March 2021, but details surrounding the case remain undisclosed. Gwent police did not provide information on the location of the seized works, future plans for them, or potential criminal charges. The continued detention of Banksy's pieces was approved by Newport magistrates' court in September 2022, under POCA, designating them as "listed assets."



POCA allows for the permanent confiscation and sale of seized items in the event of criminal convictions, considering them as proceeds of crime. A review of the case was scheduled for March 2023.

Banksy is an anonymous street artist and political activist known for his distinctive stencilled works, often addressing social and political issues. His impact on the art world is profound, challenging traditional notions of art ownership and exhibition by utilising public spaces, fostering discussions on socio-political themes, and achieving global recognition while maintaining anonymity.

[The Evening Standard](#)



Theft

Charges brought over theft of £4.8m gold toilet

Four men have been charged in connection with the theft of an 18-carat golden toilet from Blenheim Palace in southern England in 2019, according to the Crown Prosecution Service. The toilet, valued at £4.8 million, was part of an art exhibition by an Italian conceptual artist and was a fully functioning piece. Blenheim Palace, a UNESCO World Heritage Site and major tourist attraction, expressed sadness at the loss of the valuable exhibit.

James Sheen, 39, faces charges of burglary and two counts related to the transfer of criminal property. Three others—Michael Jones, Fred Doe, and Bora Guccuk, all in their 30s—have also been charged in connection with the heist.

The theft occurred in the early morning, with burglars breaking into the palace using two vehicles to execute the theft before 5 a.m. The toilet, named “America,” had not been immediately recovered, and authorities did not provide information on its current status.

Blenheim Palace, notable as the birthplace and ancestral home of British wartime leader Winston Churchill, lamented the loss of the unique toilet, which had previously been displayed at New York’s Guggenheim Museum.

The four accused individuals are scheduled to appear in court on 28 November 2023. The charges against them include not only the burglary itself but also offenses related to the transfer of criminal property, indicating potential involvement in the handling or disposal of the stolen golden toilet.

[Reuters](#)

British Museum takes action following significant loss of valuable items

In August 2023, the British Museum fired an unnamed staff member suspected of pilfering jewels from a storeroom and initiated a review of its security practices. The stolen or damaged items, including gold jewellery and “gems of semi-precious stones and glass,” range from the 15th century BC to the 19th century AD. The Metropolitan Police is investigating, but no arrests have been made.

The museum refrained from disclosing the value of the missing items due to the ongoing police investigation. A majority of the stolen pieces were small items kept in a storeroom and were not recently on public display, reserved primarily for academic and research purposes.

George Osborne, the museum’s chair, expressed determination to recover the items and pledged to invest in security and collections records to prevent such incidents in the future. Osborne acknowledged the gravity of the situation, calling it a “sad day for all who love our British Museum.”

The museum subsequently launched a new section of its website listing details of the lost items and providing updates on its recovering efforts.

This is not the first time the British Museum has faced theft; in 2017, it reported the loss of a nearly million-dollar diamond Cartier ring. Earlier instances include the theft of 15 pieces of Chinese jewellery in 2004 during opening hours and the disappearance of a 2,500-year-old Greek marble head in 2002.

[The British Museum](#) | [The New York Times](#)



Three convicted after police operation recovers £2m Ming vase

Three men have been convicted in connection with the theft and attempted sale of a £2 million Ming dynasty vase stolen from the Museum of Far Eastern Art in Geneva, Switzerland, in June 2019. The men, from southeast London, were caught in a sting operation by Scotland Yard after undercover police posed as buyers. The vase was offered for sale at £450,000, and the suspects were apprehended when they handed it over in a central London hotel in October 2021.

In August, Mbaki Nkhwa and Kaine Wright were found guilty of one count of conspiracy to convert criminal property, while David Lamming pleaded guilty to the same offence. The vase, part of the Yongle period of the Ming dynasty, was recovered by police. The Metropolitan Police’s specialist crime unit collaborated with international law enforcement partners, and the convictions were the result of a four-year investigation across borders.

The investigation began when an auction house tipped off police in July 2020 after receiving an email seeking a valuation for the stolen vase. Detectives traced the email’s IP address to Lamming’s home. The police, posing as buyers, agreed on a price with the suspects and later arrested Nkhwa when he handed over the vase in a London hotel. Telephone data indicated regular contact between Nkhwa, Lamming, and Wright.

Three items from the Ming dynasty, estimated to be worth £3.5 million, were stolen during the 2019 break-in. An £80,000 bowl was sold at an auction house in Hong Kong in 2019 but was subsequently returned to the museum. Authorities are now seeking help to locate the third stolen item, a Ming dynasty cup, with a reward of up to £10,000 offered for information leading to its recovery. The stolen “doucai style” wine cup features chicken decoration, and police have released an image to aid the public in identifying it.

[The Guardian](#)

Three items from the Ming dynasty, estimated to be worth £3.5 million, were stolen during the 2019 break-in.



In other news

Significant reform to law on corporate criminal liability

As noted above, ECCTA has now passed into law. This Act has broadened and codified the doctrine of corporate criminal liability in relation to economic crimes. Under section 196 (which came into force on 26 December 2023), where a 'senior manager' acting within the actual or apparent scope of their authority commits a relevant offence, their company or partnership will also be liable for the offence.

Relevant offences include theft, fraud, POCA offences, bribery, false accounting and tax evasion.

A new Criminal Justice Bill now making its way through Parliament, if passed in its current form, would further expand this statutory doctrine to cover all criminal offences committed by a senior manager.

[Kingsley Napley blog](#)

New bosses take over at key law enforcement agencies

On 14 September 2023, it was announced that Stephen Parkinson had been chosen as the new Director of Public Prosecutions (the head of the CPS). He took up his post on 1 November 2023, and will serve an initial term of five years. Stephen was previously the Senior Partner of Kingsley Napley.

Eleven days later, Nick Ephgrave QPM, a former senior police officer, took up his post as Director of the SFO. He has since announced three new SFO investigations. Two dawn raids have been authorised one in connection with the investigation into Axiom Ince and the other in relation to a fraud investigation involving AOG Technics Ltd.

Changes of leadership will often lead to a change in enforcement approach and focus, and it is therefore worth closely monitoring messaging from these agencies in areas of relevance, including the use of civil recovery powers, anti-fraud resourcing, whistleblowing, and the reporting of theft and fraud by victims.

[Government/CPS press release](#)

To find out more on the topic of fraud, white collar and financial crime, [click here](#)



Our Experts



NICOLA FINNERTY
PARTNER
+44 (0)20 7566 5270
nfinnerty@kingsleynapley.co.uk



MELANIE HART
PARTNER
+44 (0)20 7566 5270
nfinnerty@kingsleynapley.co.uk



SOPHIE VOELCKER
PARTNER
+44 (0)20 7369 3810
svoelcker@kingsleynapley.co.uk



OLIVIA COOPER
SENIOR CONSULTANT
+44 (0)20 7369 3832
ocooper@kingsleynapley.co.uk



CHARLES RICHARDSON
PARTNER
crichardson@kingsleynapley.co.uk



GEMMA TOMBS
LEGAL DIRECTOR
+44 (0)20 3535 1536
gtombs@kingsleynapley.co.uk



FRANCESCA PARKER
ASSOCIATE
+44 (0)20 3535 1683
fparker@kingsleynapley.co.uk



PHOEBE ALEXANDER
ASSOCIATE
+44 (0)20 3535 1559
palexander@kingsleynapley.co.uk



ELLIE FAYLE
ASSOCIATE
+44 (0)20 3535 1595
efayle@kingsleynapley.co.uk



ÚNA CAMPBELL
LEGAL APPRENTICE
+44 (0)20 3535 1689
ucampbell@kingsleynapley.co.uk

WHEN IT MATTERS MOST



www.kingsleynapley.co.uk

info@kingsleynapley.co.uk

+44 (0)20 7814 1200

DX22 Chancery Lane

Kingsley Napley LLP, 20 Bonhill Street, London, EC2A 4Dn

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