

Bought an NBA Top Shot NFT? What Did You Actually Buy?

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By Jasraj Shergill

2021 has seen NFTs, or “Non-Fungible Tokens,” become the centre of attention in the worlds of sport, investing and blockchain. A catalyst for this rise in popularity is NBA Top Shot, a new form of licensed digital collectibles from the NBA. More than \$230 million was spent on Top Shot NFTs during the last NBA season, with the most expensive highlight of LeBron James selling for over \$200,000. In recognition of this large influx of capital and the speculative nature of these assets, it is important to understand the legal rights and obligations accompanying what the NBA is selling and, more importantly, what purchasers are buying with these NFTs.

What is an NFT?

An NFT is a digital file that is individually and uniquely registered on blockchain. Blockchain networks authenticate, verify ownership and ensure the tradability of NFTs. Unlike “fungible” cryptocurrencies such as Bitcoin, each NFT is unique and not mutually interchangeable. In other words, 1 Bitcoin = 1 Bitcoin, while 1 NFT ≠ 1 NFT. Each NFT is distinguishable, with the owner purchasing a unique asset that is identifiably theirs alone.

Almost any digital file can be made into an NFT, with the most common being digital art, videos, music, GIFs, sports highlights, and even screenshots. While the content contained in an NFT can be duplicated, what gives NFTs value is that the ownership of the NFT is secure and unimpeachable. Because of how blockchain technology works, ownership of NFTs can always be publicly verified, with owners being regarded as undisputed owners of the asset in perpetuity.

NFTs are available for sale on numerous digital exchanges, with the terms and conditions of the NFT and marketplace governing one’s legal rights and obligations.

What is NBA Top Shot? Who Owns the NFT?

NBA Top Shot is an online exchange that sells NFTs of NBA highlights, and is licensed by the NBA. Purchasers are given verified ownership of a URL that links to a site where the NBA highlight is located.

The copyright owner of a digital file or asset has the exclusive legal right to create an NFT for the asset. For Top Shot, the owner of the copyright is the NBA. While some NFTs confer true ownership of the copyright of an NFT, allowing the purchaser to do whatever they want with it, the NBA sells Top Shot NFTs accompanied with various restrictions, including a restriction on the right to make copies for commercial exploitation. Although the NBA’s terms state that “you own the underlying NFT completely,” the NBA is only selling a licence to the game highlight that is portrayed in the NFT and not the underlying copyright, which is retained by the NBA.¹ These licences prohibit any right to modify, alter or commercialize the NBA highlight. Had the NFTs contained the rights to the intellectual property itself, there would be no limitations and Top Shot purchasers would theoretically be able to, among other things, reproduce, distribute and exploit the digital highlight for profit.

Top Shot users do “own” the NFT, but the NFT is subject to a licence that allows them to do a small number of things, such as buying, holding and selling the digital highlight in personal, non-commercial settings. Violating the terms of this NFT agreement could have serious consequences, such as the suspension or termination of the Top Shot account, rendering the value of the NFT within the account worthless.

Why Are They So Expensive?

The value of Top Shot NFTs is derived from the market, and not the utility or unlimited bundle of rights that accompany the digital trading card. All NFTs, whether they are just licensed or include the underlying copyrights, retain their characteristic of theoretical uniqueness - a little like an artist's etching or print of which a very few serial-numbered and signed copies have been made. Each Top Shot NFT is coded with an unique serial number so identical NBA highlights become distinguishable from one another, with lower serial numbers being more valuable. Because the NBA releases only limited quantities of each NFT, demand surpasses supply, resulting in price increases.

Restricting the supply of NFTs is critical for them to hold their value. When the supply of an NFT increases significantly, even though each individual NFT is distinguishable by a serial number and by definition is still "unique", for all practical matters, the NFT is no longer unique. An NFT with a serial number in the millions is likely to be interchangeable with another NFT with a similar serial number, and so for all practical purposes has become "fungible" and therefore likely not very valuable. It is critical to understand the terms of each NFT to determine the protections to value. Purchasers should specifically be aware of the ability of the copyright owner to unilaterally increase supply of the NFT or create similar NFTs that are minimally distinguishable. Distinguishability, scarcity and marketability derive value and non-fungibility.

Takeaways

Purchasers of Top Shot NFTs must understand the legal rights and obligations that accompany their NFTs, particularly the protections from value erosion based on what third parties may do and the prohibitions affecting the purchasers. A purchaser's failure to comply with the terms could result in significant financial repercussions, such as the termination of the NFT account and the loss of NFTs potentially valued at hundreds of thousands of dollars. Further, the future actions of copyright owners could negatively affect NFT values significantly.

¹ National Basketball Association, "Terms of Use," online: NBA Top Shot <<https://nbatopshot.com/terms>>.

*This article was authored by Jasraj Shergill, a 2021 summer student at Aird & Berlis LLP.

Author



Jasraj Shergill
Summer Student
T 416.863.1500

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