

# Research on the Legal Attributes and Legal Guarantees of Digital Collections in the Digital Era

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**Abstract:** The digital age has derived digital collections, which puts forward higher requirements for the management of cultural museums. Through literature analysis, case analysis and normative analysis, the legal attributes of digital collections are explored in order to seek the best institutional system to protect it. It is proposed to protect the legitimate rights and interests of digital collections by improving the technical framework of digital collections, promoting the integration of copyright trading and NFT transactions, and creating a linkage mechanism for cultural and museum NFT digital collections.

**Keywords:** Digital Collections; Cultural Museums; Copyrights; Legal Protection

## 1. Introduction

In recent years, under the pursuit of NFT (Non-Fungible Token) abroad, there has also been a wave of NFT in China. NFT stands for "Non-Fungible Token", which translates to non-fungible currency in Chinese. Due to the restrictions on secondary market transactions in China, most of them are collectibles, so it is more in line with their trading attributes in the domestic regulatory environment to refer to collections, so that NFTs can be localized so that they can be preserved in China, and when Xinhua News Agency refers to "digital collections", major corporate media have also followed suit. The advent of digital collectibles has sparked a boom in the digital art world. In March 2021, Christie's auction house successfully auctioned the world's first NFT digital collection "Every Day: The First 5,000 Days" for \$69.34 million, revealing the value of NFT collection while also revealing its property transaction value.

According to the data of the "Key to Activating the Digital Economy - 2022 Digital Collection Industry Research Report" [1].

officially released by the Sutu Metaverse Research Institute, in the first half of the year, the number of digital collection distribution platforms in China exceeded 500. In May 2022, "Opinions on Promoting the Implementation of the National Cultural Digitization Strategy", which also mentioned the development status of digital collections, which is enough to prove the development of digital collections in China and the degree of attention. The rapid development of digital collections has given rise to new trading models and trading platforms, as well as their own characteristics, which also have an impact on the copyright protection of traditional digital works [2]. At the same time, the application of digital collections has also brought new infringement problems, and copyright infringement of digital collections has become an important factor hindering the development of the industry. Therefore, it is urgent to study the copyright protection and risks of digital collections.

## 2. The Legal Attributes of Digital Collections in the Cultural and Museum Category

Digital collectibles are a derivative application field in the NFT system built based on the underlying technology of the blockchain. NFT is an abbreviation for Non-Fungible Token, which refers to a non-fungible circulation certificate based on blockchain technology [3]. As the latest application of blockchain, NFT is regarded as a digital property certificate registered on the blockchain because it is considered to be indivisible, unique, and tradable, and can mark assets in the online world. Users can associate images, videos, audios, and other types of digital files by minting, so as to transform goods that can be easily copied into unique NFT works, and digital collectibles are one of the manifestations.

As a unique digital certificate corresponding to

a specific cultural artwork generated by blockchain technology, the legal attributes of cultural and museum digital collections can be examined from multiple perspectives.

First of all, from the perspective of the trading and circulation attributes of digital collections, it belongs to the category of virtual property stipulated in the Civil Code [4]. This means that digital collections in the cultural and museum category enjoy similar protection in law as physical property. Secondly, cultural and museum digital collections have the characteristics of property rights such as value, scarcity, disposability and tradability. These characteristics make digital collections have a certain economic value in the market, and their issuance and circulation are regulated by law. In addition, as a virtual artwork, digital collections condense the creator's original expression of art, so they have the value of relevant intellectual property rights. In the process of creating, distributing, and using digital collections, the intellectual property rights of creators shall be respected and protected. In addition, digital collections also have unique attributes of network virtual property, such as network virtuality and technology [5]. This means that the existence and trading of cultural and museum digital collections in cyberspace are regulated by cyber law.

It should be noted that although digital collections have the above-mentioned legal attributes, the concept and specific specifications of digital collections have not been clearly defined in the current laws and regulations. Therefore, in the process of creation, distribution, trading and use of digital collections, the provisions of relevant laws and regulations should be followed to ensure the legality and compliance of digital collections. To sum up, cultural and museum digital collections belong to the category of virtual property in law, which has the characteristics of property rights and intellectual property value, and is regulated by network law. In the process of developing digital collections, relevant laws and regulations shall be continuously improved to provide legal guarantees for the healthy development of digital collections.

### **3. Copyright Ownership of Digital Collections of Cultural and Museum**

#### **Categories**

There are two types of materials extracted from cultural and museum NFT digital collections based on the underlying works: one is the cultural relics and their reproductions for which the museum has the right to operate, such as simple reproduction, ripping, rubbing and other reproduction behaviors of the cultural relics, thus forming materials that do not have originality;

According to the Law of the People's Republic of China on the Protection of Cultural Relics, the ownership of cultural relics belongs to the state, and museums only have the right to operate and keep them. According to Article 34 of China's "Museum Regulations", the state encourages museums to excavate the connotation of collection resources, develop relevant derivative products, and enhance their long-term development capabilities. The museum shoulders the important mission of promoting the excellent traditional Chinese culture. On the one hand, the NFT of collection resources can realize users' all-round appreciation of collections and promote the promotion of cultural relics, and on the other hand, it can help the transformation of China's excellent traditional culture. Therefore, the article argues that museums have the right to NFT collections that have not exceeded the copyright protection period without prejudice to the moral rights of the copyright owner. Even if the collection is within the term of copyright protection, we should promote museums to enjoy greater autonomy over the NFT of collections, so as to play the legal function of museums.

Second, after a museum develops a cultural object into an NFT digital collection, can it own its own copyright by virtue of its management status, the creativity provided at the time of authorized development, or the information contribution at the time of minting? At present, most countries do not have clear regulations on this. This will have a greater commercial impact on the subsequent copyright development of the NFTIZATION of cultural relics that have exceeded the copyright protection period. Some scholars believe that the difficulty and accuracy of digitizing works are not the same with the development of digital technology, which also requires a high level of experience of operators,

so the determination of the originality of museums' act of digitizing collections may need to be reconsidered in the future.

Finally, the transaction of NFT digital collections will not lead to the transfer or licensing of their copyrights, and the essence of NFT digital collections is a digital rights and interests certificate, not the digital collection itself, as stated in the judgment of China's first NFT infringement case "Fat Tiger Vaccination Case": "What the purchaser obtains is a property right, not a license to use a digital property, nor a transfer or license of an intellectual property right." [6] In other words, after the buyer buys the NFT digital collection, he will not obtain the copyright of the work. This is the same as buying cultural and creative products, we do not obtain the copyright of the work, but only the ownership of the material carrier.

#### **4. Optimize the Path of Legal Protection of Cultural and Museum Digital Collections**

##### **4.1 Improve the Technical Framework for Digital Collections**

The supporting technology of digital collections is blockchain. The 2019 Provisions on the Administration of Blockchain Information Services (Cyberspace Administration of China) clarifies the information security management responsibilities of blockchain information service providers, regulates and promotes the healthy development of blockchain technology and related services, avoids security risks of blockchain information services, and provides an effective legal basis for the provision, use, and management of blockchain information services. In November 2021, the "the Development of the Information and Communication Industry" (Ministry of Industry and Information Technology) built blockchain infrastructure, enhanced the service and empowerment capabilities of blockchain by strengthening the construction of blockchain infrastructure, better played the role and function of blockchain as infrastructure, and provided innovative impetus for technological and industrial transformation [7]. It is explained that it is necessary to focus on information security, improve the construction of information security framework, and provide a sufficiently

secure environment in the process of platform transaction and storage. With the construction of blockchain infrastructure as the guarantee, improve the equipment, business, management and other infrastructure, and establish a technical security framework. Supplemented by strengthening the environment and services of related industries, we will improve the relevant supporting service systems and transaction links, and give full play to the efficacy of infrastructure [8].

To sum up, the state has always adhered to an encouraging attitude towards the management of digital technology, and the rapid development of digital technology has caused many institutional loopholes in many emerging technology fields, and the flexibility and systematization of technical standards are a powerful tool to regulate the field of emerging technologies. From the perspective of digital collections, it involves multiple levels of technical structure, so the targeted provision of systematic and professional technical standards is an appropriate measure to improve the technical framework of the entire digital collection.

##### **4.2 Promote the Integration of Copyright Trading and NFT Trading**

Cultural and museum NFT digital collections are a new carrier to promote the deep penetration of cultural relics into the whole society, and the state should establish a systematic and mature copyright trading center while promoting the construction of cultural and museum NFT digital collection trading centers. The whole process of NFT trading is carried out online, and the platform should load its copyright information when the underlying work is on the chain, so that the copyright information and ownership information can be confirmed at the same time. Enterprises should assist the government in the copyright review and certification of cultural and museum NFT digital collections, and urge museums to do a good job in copyright management and construction, so as to ensure that the on-chain cultural and museum NFT digital collections have clear copyright agreements. In the process of NFT transactions, copyright transactions should also be recorded at the same time, which does not require that the ownership of NFT digital collections should be consistent with the ownership of

copyrights, but requires that the ownership of copyrights should be reconfirmed for each NFT transaction [9]. The maintenance of order must be backed by punishment, and the government shall require enterprises, museums or individuals to remove NFT transactions that violate copyright trading rules for rectification, deletion or disconnection, and take measures such as restricting NFT trading qualifications and fines in serious cases.

In addition, the relevant laws and regulations should clearly delineate the overlapping parts of the right of issuance and the right of information network dissemination in the digital collections of cultural and museum NFTs, and at least give recommendations in principle to avoid a situation that cannot be followed and hinder the management of copyright transactions.

#### **4.3 Create a Linkage Mechanism for Cultural and Museum NFT Digital Collections**

China has a long history and a long history of culture, and when all kinds of cultural relics are integrated, it can more clearly reflect the breadth and profundity of Chinese culture. Due to the constraints of time and space, this ideal is difficult to achieve in reality, and the emergence of NFT digital collectibles has made it possible. Cultural and museum institutions should promote the autonomy of the cultural and museum NFT digital collection industry and create a nationwide linkage of the cultural and museum metaverse. Specifically, industry autonomy includes the unification of processes and standards, the integration and linkage of content, and the improvement of profit distribution mechanisms. On the one hand, this is conducive to preventing the possible piracy and infringement of digital collections in the future, and on the other hand, it plays a role in supervising the design of digital collections of cultural and museum NFTs to avoid homogenization [10]. In addition, industry autonomy can also help solve the problem of integrating copyright trading and NFT trading, and promote the standardization of copyright management. The linkage of cultural relics content and profit distribution can achieve a win-win situation for all parties, avoid conflicts and disputes between museums due to the secondment of cultural relics, and

museums can also gain greater initiative when negotiating cooperation with enterprises that build digital platforms.

The advent of the digital era has quietly affected all walks of life. The legal protection of collectibles in the field of culture and museums has also been impacted by digital technology. As a new thing in cultural and museum collections, it is extremely necessary to determine the legal attributes of digital collections, and only by clarifying their attributes can we further strengthen the legal protection of their rights and promote the process of legalization of cultural and museum collections.

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