**The law and economics of NFTs as decentralized digital property**

Roberto Pardolesi
LUISS GUIDO CARLI

Department of Management

rpardole@luiss.it

Massimiliano Granieri

University of Brescia

Department of Mechanical and Industrial Engineering

massimiliano.granieri@unibs.it (corresponding author)

**Abstract**

Lured by the pervasiveness and the unbound nature of digital technologies, enthusiasts of tokens start believing that non-fungible tokens (NFTs) are set to revolutionize the internet and the digital world altogether. In true believers’ forecast, tokenization (that is, the association of an object, both physical or digital, with a digital token tracked on the blockchain) will eventually dwarf national states’ role in minting currencies and protecting property rights, by replacing centralized structures of public power with a decentralized infrastructure of self-enforcing legal rights. This suggestion is extremely interesting in a perspective of comparative law and economics. With no doubts, property is the field of law with the lowest level of convergence among legal families and changes are slow and cumbersome because of the many political implications (including arguments about taxation). So, NFTs promise to solve the problem of harmonization by creating a digital super-structure that will overwrite national systems. If the prophecy about NFTs will prove true, if state sovereignty will lose grip with respect to property and legitimacy in protecting and enforcing property rights, both in the brick-and-mortar and in the digital world, then the whole economic order will need a comprehensive reconstruction in light of the decentralized architecture of tokenized property. If, of course.

Moving from the way NFTs work in the digital environment, in this paper we endeavor to challenge some of the current views about tokens, not in general, but from a law and economic legal perspective. By no means we play down the potential of NFTs from a technological standpoint; the not-so-far evolution of the digital world will tell whether non-fungible tokens will exert the predicted disruptive force. But, even if that happened (and skepticisms might not be unjustified), there is no assurance, nor intrinsic need, that such radical change takes place by subverting or minimizing the role of state laws in general and the law of property in the specific. We claim that even NFTs rely on a notion of property that is one granted by states and that the evolution of the internet will happen within, and not without property laws.

While reviewing the current conversation about NFTs, this paper also aims at characterizing non-fungible tokens from a legal viewpoint—what they are, what is the relationship between an NFT and its creator, if and how they can be legally transferred, and which are the implications of tokenizing an asset (either movable or immovable), whether once tokenization has taken place the underlying legal ties between the owner and the tokenized good are lost or transformed. Answering these questions implies a perspective, since the law of property might diverge from legal system to legal system, from family to family. We conduct the analysis from a continental perspective, assuming – with an inevitable degree of simplification – that property laws in European civil law countries hinge on common institutions and rules.

A law of digital property, that is not built on state’s powers and sovereignty but is fully decentralized and rests on the digital infrastructure of the blockchain, sounds like an enticing suggestion. Yet, the premises of such new legal order are far from easy to obtain and eventually a more balanced and rigorous analysis of NFTs should explain why the sort of deterministic enthusiasm that envisions that end of state property is unwarranted, even though NFTs promise to enjoy a wide use in the market because of their intrinsically ability to bring efficiency in exchanges.