

CREATION AND SALE OF NFTS AS AN OPPORTUNITY AND CHALLENGE FOR CONTEMPORARY MUSEUMS

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Introduction

The world's shift to virtual space forced by the COVID-19 pandemic triggered interest in digital art. One of its elements is an NFT, namely a non-fungible token sitting on a blockchain, meant to secure files. It allows to minimize the danger of violation of copyright or intellectual property typical of digital files of digitized objects placed in open access (thus it has exclusive value within its blockchains¹). NFTs became particularly popular in 2021 as a result of the post-COVID-19-pandemic crisis attracting the interest of world museums who were seeking additional income sources and means to make their offer more attractive in order to encourage visitors. Some museums decided to acquire NFTs, others to create them, while others still mounted displays dedicated to the topic. Several museums took a closer look at NFT's theoretical aspects, hosting conferences, seminars, or author's soirees. However, NFTs also imply many challenges, beginning with substantial financial outlays, equipment requirements, as well as the need to search the inventory for objects which could be transformed into an NFT. The remaining questions concern the fact to what extent visitors could be interested in NFTs, whether museums would find buyers for their tokens, and whether NFTs harmonize with museums' mission.

The present paper analyses challenges and opportunities Polish museums will face in relation to NFTs' creation and sale in the eyes of Art. 9 of the Act of 21 November 1996 on Museums² (AoM) if they decide to become involved in the trend. For the time being no Polish museum has taken such measures. For example, the National Museum in Warsaw *has not implemented, and at present is not intending to*

introduce tokens in view of their digital assets, explaining that this results from the policy of openness with respect to access to the collection shared by ISP free of charge at high quality.³ Thus the question arises whether NFTs constitute for museums a long-term opportunity to achieve their goals and fulfil tasks, or whether they are but a transitory trend which might secure temporary financial assistance to the largest institutions. The methodology of the paper also foresees a survey to hear the opinion of Polish museum curators on the research question formulated as above.

Creating NFTs by museums and their sale

In compliance with the provisions of Art. 9 AoM, museums can conduct business operations as their additional activity in order to finance their activities as specified in Art. 2 AoM. The rules for the conduct of such activity shall be defined in the museum's Charter (Art. 6.2.7) The income obtained from this activity can only be allocated to financing its tasks and fulfilling the museum's mission. Therefore, such a solution does not undermine the basic definition of museums as not-for-profit organizations. In this respect, the current trend of creating and selling NFTs complies with the provisions of Art. 9 AoM, and can constitute one of the sources of museum's revenue. All the more so, since over the last decades a general commercialization of the activities conducted by museums has been observed.⁴

The first to have created an NFT was the Uffizi Gallery using the painting *Doni Tondo* by Michelangelo. The Hermitage Gallery also created tokens of its paintings: two

digital copies of each work, one meant for sale and the other to serve the Museum. The British Museum created an NFT of every item displayed at the Hokusai-dedicated exhibition. The Leopold Museum in Vienna created NFTs of paintings and drawings by Egon Schiele in order to raise financing necessary for the renovation of his recently-discovered painting *Leopold Czihakczek at the Piano*, which, as a matter of fact, was also converted into an NFT.

Such a prompt reaction of museums to this new trend may be found surprising, bearing in mind that these institutions are rarely at the forefront of adapting new technologies, this most often resulting from their tight budgets, traditionalism, and a cautious attitude to experimenting. However, in this particular case the financial crisis triggered by the COVID-19 pandemic had a decisive impact. The sanitary restrictions applicable to cultural institutions as well made the museum attendance plummet by 77% worldwide.⁵ In Poland when 2020 figures are compared to those of 2019, the attendance at temporary on-site exhibitions dropped by 40%, and by 8.7% at permanent exhibitions. Overall, museums and museum branches observed a decrease (by 58.7%) of the number of visitors.⁶ In order to survive many museums had to reduce costs, either through making their staff redundant⁷ (this not sparing even the largest institutions, such as Tate Modern⁸ or the Victoria and Albert Museum), or through the sale of exhibits (the Everso Museum of Art auctioned Jackson Pollock's *Red Composition* while the Royal Opera auctioned *Portrait of Sir David Webster* by David Hockney). At the same time many museums were searching for new income sources, and NFTs' sale was to be one of them.

When making a decision to create and sell an NFT, a museum has to bear in mind the instability of the value of cryptocurrency, this most clearly seen in its market crisis in June 2022. It was Bitcoin which lost most, however, Ethereum which is the most popular currency for the acquisition of NFTs also significantly fell in value. As a result, the above-mentioned NFTs of Hokusai's works from the British Museum a year after the sale are today four times less valuable than at the moment of purchase.⁹ This results from a tighter financial policy and struggle against inflation, therefore museums need to be aware that the investing in NFTs and treating them as a long-term additional source of income do not have to necessarily yield the expected benefits. Furthermore, the type of museum objects amassed at a given museum may have an impact on creating NFTs. Museums managing ample archival materials with information which may be of interest to a narrow circle of the public stand the opportunity of creating NFTs which will be more of an educational character than collectibles.

NFTs' ownership rights versus museum objects' ownership rights

Nonetheless, sales of tokens' ownership can arouse some doubts. The value of an NFT created by a museum, meaning the owner of the genuine artwork, but also an institution enjoying high public trust, is very high. As a result of the sale in the physical world no change occurs, meanwhile in the metaverse, namely the virtual equivalent of our world, the disposal of NFT's value is of colossal importance. Although to many the existence of the world within the world still sounds

like a Science Fiction invention, many analysts underline that we are witnessing this world's extension and importance growth. Despite the fact that museums do not sell their digital rights to their items (the majority of them belong to public domain anyway), however, when selling the only NFT copy, the museum loses control over it in the virtual world in which NFTs will be a standard format of possessing digital assets.¹⁰ This will gain particular importance for future collectors raised in the digital era who will most likely prefer the art of the new media and the digital format of such pieces' storage, display, and protection.

The above-described actions of museums and sale of NFTs of the most precious museum objects have been widely criticized by the public opinion and analysts, and in Italy the government has prohibited sale of NFTs of Renaissance paintings until legal regulations in this respect are in place and the metaverse landscape is more transparent.¹¹ This, however, does not imply that museums should give up creating and selling NFTs. Some museums have resorted to other solutions. Manchester's Whitworth Art Gallery have issued 50 NFTs of alternative versions of William Blake's *The Ancient of Days* created by the John Rylands Research Institute and Library at the University of Manchester with the use of multispectral software which elaborated Blake's print in different light: from UV to infrared.¹² This was a perfect combination of the work of a great artist with modern technology. When auctioning Leonardo da Vinci's drawing *Head of a Bear*, Christie's cooperated with young artists, too: the Hackatao duo who created their own version of the drawing which they called *Hack of a Bear* in the NFT series format. Such cooperation between museums and contemporary artists could yield interesting works inspired by masterpieces, while not requiring the sale of NFTs' ownership of museums' most precious artworks. Another approach to the topic has been presented by Vienna's Belvedere: on the occasion of Valentine's Day, the Museum issued a digital version of Gustav Klimt's *Kiss*. The painting was divided into 10,000 pieces, and each was converted into an NFT. As a result, it is not single individuals who own the token, but many. What is more, such attractive projects for buyers turn them into art patrons supporting a museum. Thus, it is up to the museum and its organizer whether to create an NFT which is a precise copy of an artwork, or whether it should be a variation on the work and its artist, or maybe a form of tribute to the latter, promoting at the same time a contemporary artist, or even an e.g., holo-NFT (token's version creating augmented reality¹³). NFTs also open the possibility to create 'virtual' museum souvenirs with the use of a blockchain which could be an equivalent of exhibition posters, mugs, or magnets popular in museum shops, and which would not necessarily be a faithful digital copy of the displayed items, this seeming a 'safer' solution.

Furthermore, the question arises whether, as suggested by some researchers, when considering NFTs as digital equivalents of limited work editions,¹⁴ their sale should not be regulated just like that of material items. In many countries sale of museum objects for exclusively financial reasons is prohibited (e.g., France), minimized (e.g., US), or scrutinized (e.g., Great Britain). In Poland Art. 23 AoM introduces limitations on museum objects' de-accessioning. In compliance with its provisions, state and local government

museums may exchange, sell, or donate museum objects only upon the permission of the Minister of Culture and National Heritage. The Minister's consent is discretionary, and granted only in justified cases.¹⁵ The transfer of museum objects' ownership is permissible, provided the gained resources are assigned exclusively to complementing the museum's collection.¹⁶ Among museum curators the topic of 'de-accessioning' arouses controversies. Some of them claim that ownership of museum objects should not be transferred, since such activity contradicts museums' mission whose goal is to amass and protect assets. Contrariwise, others claim that the dynamics of the present world forces museums to extend collections, introduce modern models of museum collection management, and to raise funds for museums' operation, including the development of fundraising sources.¹⁷ Finally, let us recall that the ICOM Code of Ethics for Museums permits de-accessioning of objects from collections only upon a thorough investigation of its significance, character, and legal status. Importantly, de-accessioning is not permissible if it leads to the loss of public trust. The latter sentence is of particular importance in view of the instability of the cryptocurrency market and the challenges that NFTs incur. Therefore, maybe digital equivalents of artworks should be treated as museum objects, and be subject to the same legal restrictions, particularly in view of the above-mentioned fact that the metaverse has been expanding.

Opinions of museum curators on creating and selling NFTs by museums¹⁸

In the eyes of museum curators, NFTs constitute more a transitory trend than the future of art, although they do emphasize NFTs' relevance for the art market. The challenge that museums would face if they decided to create NFTs would apply, in their view, to providing the necessary infrastructure and staffing, this impossible right now in museums owing to their financing shortages affecting even their current operation, e.g., with respect to collection digitizing. Therefore, the vast majority of the museum curators cannot see the possibility to amass, share, or create NFTs by their respective museums, although, on the other hand, they agree that creating NFTs is a good idea that could provide additional income to a museum. They claim that *every solution promoting art and supporting its development is good*, and that *NFTs fit within the group of museum gadgets*. The rest of the respondents believe that NFTs are a controversial solution which in extreme cases could endanger museums' interests.

Conclusion

World museums interested in NFTs initially limited themselves to implementing merely educational tasks, while

gradually more of them are currently involved in acquiring, displaying, creating, and selling them. Regardless of whether NFTs are but a transitory trend or the future of art, they cannot be ignored, particularly in view of their growing popularity and the potential NFTs can have for artistic creation, museum praxis, and museums' business models.

For many museums the first NFT-related action was to prepare a programme presenting its basic assumptions, and create a platform for opinion exchange on the topic. This may help in making the decision to what degree to become involved in the trend, and also present the museum as a modern place, trying to catch up with all the novelties in the world of art. It could benefit both the museum staff and the public. The fact that education on NFTs is necessary, in order to show e.g., a difference between an artwork and its digital carrier or protection, and that the topic is complex can be seen from the surveys in which mental shortcuts of the type: an NFT is digital art are used.

The museums which decide to create NFTs will have to analyse the following: developing infrastructure essential to store NFTs, establishing cooperation with a technological partner, raising funds for such projects, and providing appropriate training for the staff. The challenges such as a high carbon footprint, instability and lack of transparency of the cryptocurrency market, as well as the lack of legal regulations: NFT versus copyright, are merely the beginning of the debate which is very important from the point of cultural institutions deciding to become involved in NFTs (for various reasons/regardless of the reasons). Other factors of relevance in this respect are the inclusion of entities from the art market in the Act on Money Laundering and Terrorist Financing in 2021¹⁹ and the activity with respect to virtual currencies which are basic currency used in so-called NFT Exchanges. Legal regulations related to blockchains are also *at the stage of shaping habits and their essential standardization [...] and it is hard to predict the development direction of this technology*.²⁰

Furthermore, difficulties in finding trusted (verified) technological partners or the costs of such a cooperation are the most frequently given reasons for museums' reluctance to NFTs.²¹ The latter may also stem from museums' traditionalism and shortage of funds for digital development. Museums are not eager to undertake risks which could tarnish their reputation. Currently digital reproductions of artworks in the form of NFTs are treated as equal with their material counterparts, although they are their faithful repetition. Such a process may lead to changing the perception of the artwork's value, no longer perceived as materially authentic, or of historical or religious significance. When selling a digital NFT's ownership, thus validating its value, museums as institutions enjoying trust and authority, contribute to blurring the boundary between the original and the reproduction.

Abstract: NFT gained widespread popularity in 2021, and world museums are the ones that have taken an interest in it. It was due to the financial problems caused by the COVID-19 pandemic. Creating an NFT of the museum's artwork and its sale is to be one of the solutions. In this paper,

the Author analyses challenges and opportunities regarding the creation and sale of NFTs by museums in the eyes of Article 9 of the Act on Museums. This article emphasizes selected opportunities and challenges, such as the instability of the value of cryptocurrency, viewers' interest in NFTs,

the correlation between the ownership of an NFT and the museum's artwork, and, last but not least, the equipment and staffing requirements. Before making the final decision,

museums would have to face them. The penultimate part of the paper includes Polish museum professionals' opinions on this topic.

Keywords: NFT, non-fungible token, NFT's ownership, creating NFT by museums, selling NFT by museums, museums' business activity.

Endnotes

- ¹ LegalTech. *Czyli jak bezpiecznie korzystać z narzędzi informatycznych w organizacji, w tym w kancelarii oraz dziale prawnym*, ed. by D. Szostek, Warszawa 2021, p. 42.
- ² The questions of amassing, displaying, and educating on NFTs, namely on the tasks in Art. 2 AoM are the topic of the Author's another study, therefore here they have been omitted.
- ³ E-mail correspondence with the National Museum in Warsaw.
- ⁴ P. Stec, 'Komerccjalizacja muzealiów', *Muzealnictwo*, 47 (2006), pp. 212-221.
- ⁵ E. Sharpe, J. Da Silva, 'Visitor Figures 2020: Top 100 Art Museums Revealed as Attendance Drops by 77% Worldwide', *The Art Newspaper*, 30 March 2021, <https://www.theartnewspaper.com/analysis/visitor-figures-2020-top-100-art-museums> (Accessed: 10 Oct 2022).
- ⁶ See <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/dzialalnosc-muzeow-w-2020-roku,12,4.html> (Accessed: 10 Oct 2022).
- ⁷ G.K. Adams, 'Redundancies and Reduced Opening Hours at Science Museum Group Sites' <https://www.museumsassociation.org/museums-journal/news/2020/11/redundancies-and-reduced-opening-hours-at-science-museum-group-sites/> (Accessed: 10 Oct 2022).
- ⁸ R. Atkinson, 'Tate to Cut 120 Jobs to 'Survive Crisis'', <https://www.museumsassociation.org/museums-journal/news/2020/12/tate-to-cut-120-jobs-to-survive-crisis/> (Accessed: 10 Oct 2022).
- ⁹ Y. Jung, 'Current use cases, benefits and challenges of NFTs in the museum sector: toward common pool model of NFT sharing for educational purposes', *Museum Management and Curatorship*, (2022), p. 6; B. Grosvenor, 'The British Museum demeans itself by selling its works as NFTs – and will probably live to regret it', *The Art Newspaper*, 2 Oct 2022, <https://www.theartnewspaper.com/2022/02/09/the-british-museum-demeans-itself-by-selling-its-works-as-nftsand-will-probably-live-to-regret-it> (Accessed: 10 Oct 2022).
- ¹⁰ A.S.V. Radermecker, V. Ginsburgh, 'Questioning the NFT „Revolution” within the Art Ecosystem', *Arts*, 25 (vol. 12,1, 2023), p. 12.
- ¹¹ See <https://euroweeklynews.com/2022/07/09/italian-government-prohibits-sale-of-nfts-of-italian-renaissance-paintings/> (Accessed: 10 Oct 2022).
- ¹² E. Nieto Mcavoy, J. Kidd, *Crypto Art and Questions of Value. A Review of Emergent Issues*, 2022, pp. 12-13.
- ¹³ Holograms serve as a teaching aid during museum classes at the Imperial War Museum czy Science Museum in London.
- ¹⁴ F. Valeonti et al., 'Crypto Collectibles, Museum Funding and OpenGLAM: Challenges, Opportunities and the Potential of Non-Fungible Tokens (NFTs)', *Applied Sciences*, 11 (2021), p. 3.
- ¹⁵ P. Antoniuk, *Ustawa o muzeach. Komentarz*, Warszawa 2012, p. 139. This expressed rule 2.16. formulated in the ICOM Code of Ethics for Museums.
- ¹⁶ I. Gredka-Ligarska, 'Komentarz do art. 23', in: Z. Cieślak, P. Gwoździewicz-Matan, I. Lipowicz, A. Matan, K. Zeidler, I. Gredka-Ligarska, *Ustawa o muzeach. Komentarz*, Warszawa 2021, p. 325.
- ¹⁷ N. Fyderek, W. Szafrąński, *Sprzedaż muzealiów – niewykorzystana szansa czy brak konieczności*, w: *Kultura w praktyce. Zagadnienia prawne*, vol. 3, ed. by A. Jagielska-Burduk, W. Szafrąński, Poznań 2014, p. 11.
- ¹⁸ Study on the grounds of an online survey addressed in September 2022 to 130 museums from the list of museums registered in Poland. Museum curators were asked what they know about NFTs, and whether they are a transitory trend or the future of art; also whether they see the capacity for NFTs to be used in museums, and if the museums have been appropriately prepared for such projects. The sent in replies are extremely valuable, however, their limited number (20) does not allow any attempt at generalization.
- ¹⁹ W. Szafrąński, 'Nowe regulacje dotyczące przeciwdziałania praniu pieniędzy w obrocie dziełami sztuki. Między implementacją V AMLD a rozwiązaniem systemowym', *Santander Art and Culture Law Review*, 1 (2021), p. 67.
- ²⁰ D. Szostek, *Blockchain a prawo*, Warszawa 2018, pp. 9, 24.
- ²¹ Y. Jung, op. cit., pp. 8 ff.

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