

# MATTOS FILHO

## Non-Fungible Tokens (NFTs)

Non-fungible token technology has the potential to create new possibilities for business across a wide array of sectors. This could also lead to new legal concerns, especially as NFTs remain a relatively new concept.

### Concept

The acronym 'NFT' stands for 'non-fungible token', a certificate of authenticity registered on the [Blockchain](#) that can be verified and confirmed, but not altered. As the term 'non-fungible' may suggest, an NFT cannot be replaced, making it unique and unexchangeable. Each NFT is linked to a specific asset (or fractions of it) – commonly physical or digital artworks, though other possibilities also exist. Importantly, NFTs should not be confused with the works themselves.

### Technology: How can I create an NFT?

Generally speaking, the following steps are required to create an NFT:

- Define the asset the NFT will represent – artworks (physical or digital), event tickets, games, among others;
- Select the blockchain network the NFT will be issued in;
- Select the marketplace the asset will be sold in;
- Set up a crypto wallet on a platform integrated with the blockchain network and marketplace of your choice;
- Access a crypto-exchange and purchase cryptocurrency to pay for the applicable 'gas' (NFT creation fees);
- Connect your crypto wallet to the selected marketplace;
- Upload the asset you intend to 'mint' (link to an NFT), including a title and description. You will also need to specify the royalties you wish to receive for sales in secondary markets and approve the payment for the gas.

**Note:** Through this process, marketplaces create smart contracts according to their own parameters, but hiring a developer to create a customized smart contract is also possible.

### NFT Purchases and Sales

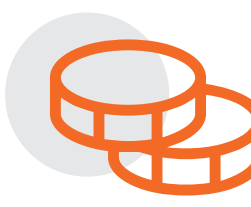
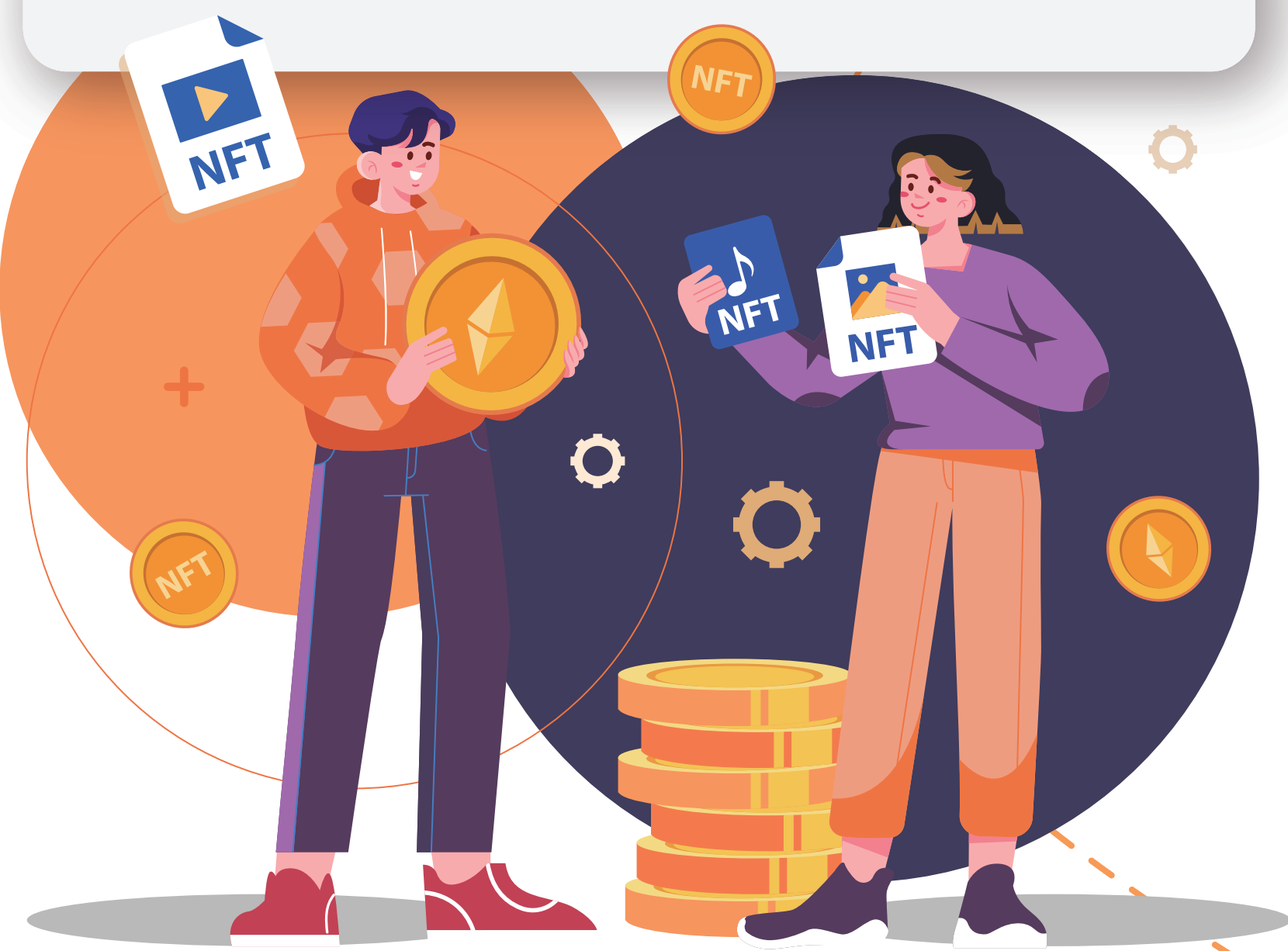


#### Legal implications for selling NFTs

NFTs are offered on marketplaces and sold via auction or at a fixed price. Sellers transfer the ownership of the NFT itself but do not necessarily own the asset linked to it.

The rights a given NFT transmits to the owner are determined by the provisions of the smart contract linked to it. These provisions must be in line with what the seller can and wants to transfer to the buyer, whether in regard to ownership, certain economic rights, or merely the license to use the work for specific purposes.

When creating and selling an NFT, it is important to ensure that all necessary authorizations have been obtained for carrying out the transaction. For example, if the NFT is linked to a third-party work, the author must have granted the NFT creator specific authorization to create and sell the token.



#### Legal implications for purchasing NFTs

In nearly all cases, purchasing an NFT involves the rights of the artwork/asset author and the NFT creator/seller – not to mention the purchaser.

As the artwork and the NFT are not the same objects (the artwork is the asset and the NFT is the token/support), owning an NFT does not necessarily mean owning the artwork or the economic rights over it. In other words, owning an NFT does not mean you can reproduce, alter, distribute or economically exploit the work it represents – just as when buying a painting or a book, one does not acquire the right to perform any such acts.

In this type of transaction, the same precautions should be taken as when outside the digital environment – the buyer should seek proof that the artwork is authentic and that all required authorization for the corresponding NFT has been obtained if it belongs to a third party. It is not uncommon for NFTs to be created and sold without the required authorization – in such situations, the buyers do not acquire any rights over the artwork.



### NFTs and Intellectual Property

A substantial percentage of the NFTs available on the market involve artworks, avatars, memes, movies, and other related media. Therefore, specific caution should be taken from an intellectual property perspective, especially in regard to copyrights and licenses.

As well as obtaining the necessary authorization and licenses (as indicated above), where an NFT represents ownership over an artwork, one must be aware of the right of resale – a legal obligation requiring at least 5% of the added value to go to the author for each resale of the original artwork – when applicable. The right of resale can be inserted as a provision into the NFT's smart contract, in which case each new sale will trigger the payment of the corresponding amount directly to the author's crypto wallet.

### NFTs and Data Protection

Processes linked to the creation, purchase and sale of NFTs involve personal data processing (e.g., the creators of an NFT may process the data of the work's author(s) or rightsholder(s), while marketplace owners process data about those involved in a transaction). **Therefore, it is important to consider the obligations established by data protection legislation, especially the Brazilian Data Protection Law (LGPD), which applies to all data processing carried out in Brazil or when the data subject is located in Brazil at the time of collection, even if the controller's headquarters are located elsewhere.** Companies involved in these processes may encounter certain challenges in meeting the rights of data subjects and ensuring transparency, among other potential issues.

### NFT applications

Beyond artworks, NFT technology is already being applied to several areas of the market, particularly in relation to the following applications:

- Online games;
- Fashion (luxury clothing and accessories); Beauty products (combining digital assets with augmented reality to allow consumers to display products within the Metaverse);
- Events and event tickets; and
- Financial products.

