

## CLIENT ALERT

### ***Reasonable Doubt: Ambiguity About Your NFT Offering Could Result in a Lawsuit***

July 9, 2021

A cautionary tale for NFT sellers has emerged this month through a lawsuit by Roc-A-Fella Records, Inc. (“RAF”) against label co-founder Damon Dash. In the suit, filed June 18, 2021 in the Southern District of New York, RAF alleges that Dash is attempting to sell the copyright for fellow co-founder Jay-Z’s infamous 1996 rap album *Reasonable Doubt* as an NFT. RAF, not Dash, owns the copyright. Dash counters that he is actually trying to sell his one-third ownership stake in the label itself. The legal dispute revolves around what the NFT at issue includes.

At the center of the litigation is an arguably ambiguous auction announcement by the NFT platform SuperFarm. Per the Complaint, Dash had intended to sell his NFT on the platform in a now-cancelled online auction on June 23, 2021. The auction announcement stated: “SuperFarm is proud to announce ... the auction of Damon’s ownership of the copyright to Jay-Z’s first album *Reasonable Doubt*. This marks a new milestone in the history of NFT’s, entitling the new owner to future revenue generated by the unique asset.” While RAF perceived this as an unlawful offer to sell the actual copyright for *Reasonable Doubt*, it might also have been read to entitle the NFT purchaser merely to any revenue Dash himself would have earned from the album.

Imprecise NFT descriptions can produce consequences for buyers as well as sellers. Under the traditional common law rule, the original owner of an asset can repossess it, overcoming the claim of a subsequent innocent buyer who purchased the asset from someone who lacked good title. This doctrine is founded on the idea that a person cannot convey a title he himself does not possess. Under this theory, an NFT purchaser can receive only those rights the seller can legally convey, no matter how the NFT was described. While most NFT platforms include provisions in their terms of use dealing with illegal or third-party IP infringing sales, buyers should be wary of overly broad NFT descriptions and should be aware that purchased NFT rights can be rescinded or modified even after payment.

Dash’s proposed offering also raises interesting questions about the limitations of NFTs. Under RAF’s depiction of the sale, Dash was purporting to sell not just a particular image or sound file, as is typical, but the actual copyright for *Reasonable Doubt*. Generally, purchasers of copyrighted works receive only limited rights in a particular copy of the work. The copyright remains with the creator unless otherwise provided by contract or operation of law. If a copyright owner intends to transfer copyright ownership in the underlying work along with an NFT, such intent can be recorded in the language and description of the NFT. The idea that NFTs can be used to transfer ownership not just in copies but in actual copyrights (and resultant royalties) creates a world of possibilities for tracking and transferring IP rights. In a similar context, companies like IBM are exploring such use of NFT technology to track and transfer patent ownership.

Dash’s alternative explanation of his attempted sale appears to raise other risks. Under his interpretation, the proposed NFT would embody Dash’s one-third stake in RAF. NFTs are “supposed to confer a sense of airtight ownership and exclusivity.” Conveying partial business ownership would be a seemingly novel use of NFT technology and has the potential to conflict with anticipated rights associated with the purchase of the digital asset. In addition, sales of sensitive assets like business stakes may

be subject to separate contractual obligations. Such NFT offerings present substantial risk of legal liability and likely should not be undertaken absent careful review by legal counsel, including disclosure of limitations that may apply to partial or shared ownership rights. Finally, use of NFTs to transfer business ownership stakes might feed emerging suspicions that NFTs are, in fact, securities—an allegation currently being raised in a different lawsuit against NBA Top Shot.

Dash maintains that RAF’s suit—which alleges copyright related claims, breach of fiduciary duty, and even conversion—is frivolous. He claims it was filed by RAF to devalue his NFT offering and ownership stake in RAF. In a possible effort to pour salt in the wound, Jay-Z recently announced an NFT featuring original digital artwork based on the cover art for the same *Reasonable Doubt* album. While the two co-founders, who cut ties in 2005, are embroiled in litigation over Dash’s proposed sale, Dash has been temporarily restrained by the court from minting and issuing the NFT on SuperFarm. He stands to lose more if the permanent relief sought is ultimately granted.

To reduce the risk of such litigation, NFT descriptions should be meticulously clear about the rights included, and ownership of all such rights should be verified in advance. If an NFT seller is perceived to offer rights they do not own, they could be stopped or enjoined from completing the sale. Additionally, NFT purchasers should be wary of NFTs that appear too good to be true and should anticipate possible changes to their purchased rights, especially under the terms of use for the NFT platform facilitating the sale. Finally, businesses should stay apprised of developments in the law surrounding NFTs as the parameters of these novel digital assets are further refined.

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[1] [Complaint, Roc-A-Fella Records, Inc. v. Damon Dash, No. 1:21-cv-5411 \(S.D.N.Y. June 18, 2021\)](#)

[2] [Adi Robertson, An NFT of Jay-Z’s First Album Has Sparked a Record Label Lawsuit, Verge \(June 21, 2021\)](#).

[3] [Micah Drayton, The Sale of Patents and NFTs, JDSupra \(June 17, 2021\)](#).

[4] Robertson, *supra* note 2.

[5] [Courtney Rogers Perrin, We Knew It Was Coming: The First NFT Lawsuit is Here, Frost Brown Todd \(June 9, 2021\)](#).

[6] [Benjamin Powers, Jay-Z to Auction ‘Reasonable Doubt’ NFT at Sotheby’s, Coindesk \(June 25, 2021\)](#).

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For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Christopher A. Cole**

Partner – Washington, D.C.

Phone: +1.202.624.2701

Email: [ccole@crowell.com](mailto:ccole@crowell.com)

**William H. Frankel**

Partner – Chicago

Phone: +1.312.321.7736

Email: [wfrankel@crowell.com](mailto:wfrankel@crowell.com)