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Thank you for reading the May 2022 issue of Sterne Kessler's MarkIt to Market® newsletter. This month, we discuss Spotify's exploration into NFTs, two new USPTO policies with practical implications for trademark applicants and firms, and the NIH's notice of special interest concerning the use of cannabis derivatives in cancer biology. We also share the new open gTLD sunrise period.

Our [Trademark & Brand Protection practice](#) here at Sterne Kessler is devoted to guiding companies of all sizes in developing and maintaining strong brands around the world. There is always something new and exciting happening in our unique IP niche, and we bring you updates each month to help you keep on top of it all. Thanks for your readership. If there is something you would like us to cover, please don't hesitate to reach out to us and let us know!

Kind Regards,



[Monica Riva Talley](#)
Editor

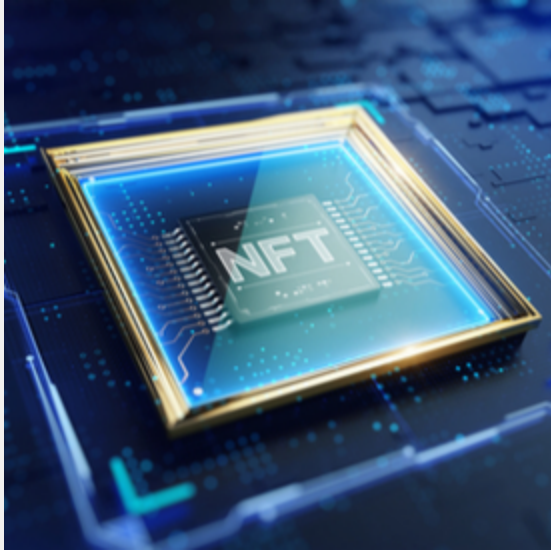
In This Issue

- > [Web3 Inspires Spotify to Try NFTs](#)
- > [Two USPTO Updates Address How Business Gets Done in 2022](#)
- > [Watching the Pot™](#)
- > [gTLD Sunrise Period Now Open: May 2022](#)

[Download PDF](#)

Other Links

- > [Volkswagen Wins \\$1.2M in Suit Over Counterfeit Audi Wheels](#)



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By: [Kathleen Wills](#)

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For example, Spotify recently announced plans to add NFTs along with blockchain technology to its platform. Spotify is one of the largest music streaming services, with over 406 million monthly active users in 2021. Spotify's plan isn't surprising, as famous musicians including Snoop Dogg, Steve Aoki, Grimes, and Kings of Leon have already allowed listeners to transact NFTs. Currently gauging interest for a select number of users, Spotify's move would allow artists an extra source of income by linking their third-party NFT platforms (e.g., OpenSea) to their profiles, similar to linking a merchandise store. This comes on the heels of announcements that Meta, Instagram, Twitter, and Reddit might add visual NFTs (think profile pictures) to their platforms. Not to mention that some companies, like Live Nation Entertainment, the company responsible for concert tickets with an estimated net worth of \$19.83 billion as of May 2022, announced last year its plans to collaborate with artists in order to give fans digital collectible NFT ticket stubs – a digital twist to the era of collectable stubs.

But is the interest in NFTs, the metaverse, and Web3 here to stay? If so, how should companies prepare for this market? Although the numbers vary, it is estimated that \$17.7 to \$41 billion of NFTs were traded last year, ranging from visual artwork to games to collectibles. These numbers represent only 10% of traders, which account for 85% of all NFT transactions. While this online market is highly volatile, similar to cryptocurrency, the art world has been capitalizing on selling NFTs to niche consumers willing to pay steep prices for collectibles. Companies behind famous brands like Converse, Nike Inc., and Mattel Inc. have already filed trademark applications for NFTs. Thus, while no one can fully predict the trajectory of Web3, one thing is clear: this new phase of the internet and seemingly limitless marketplace poses great implications for property ownership rights.

For example, when Snoop Dogg sells an NFT of his music, the transaction between Snoop and the fan is recorded on blockchain technology in a primary market. Unlike with song streams where musicians don't make much money off of the plays, with NFT sales, fans are increasing an artist's value with each transaction. That means that the more sales an artist makes, the more valuable the NFT will be. NFTs (and the idea of Web3) have the potential of bringing artists and brands even closer to their fans. But consumers should make sure to understand what rights they are purchasing with the NFT – if any – while artists and brands should decide what rights to retain and what creative changes to allow fans to make to their content.

Flexibility of NFTs

There are various types of NFTs, like Smart NFTs, that contain additional programming options that enable an artist to control what ownership rights to keep in their token. Smart NFTs with embedded contracts can allow artists to communicate their reservation of rights in the NFT such that the fan doesn't own the token. This then implicates the secondary market of reselling NFTs – a market that is growing exponentially. With resales, the artist gets a commission or royalty each time the NFT is resold, even as the appearance of ownership changes “hands.”

Another functionality is time-limited NFTs, where a fan can buy an NFT for a limited period of time until the token returns to the original owner. The best example of the usefulness of this feature would be a concert ticket, which retains value and can be re-marketed as memorabilia in a secondary market even though the purpose has changed. Similarly, an emerging concept of Smart NFTs is Upgradeable NFTs, where users can “sample” an original work and add to it, like a song remix. Such a derivation of the original work would typically carry heavy legal implications about infringing intellectual property rights, but with upgradeable NFTs, creators can choose to allow collaboration and creativity.

Takeaways

Web3 is a phase of the internet with limitless programmability regarding transactions and ownership, particularly between brands and artists to their consumers and fans. Using NFTs and entering the metaverse with blockchain technology was a success in 2021, and now Big Tech is brainstorming ways to incorporate visual and audio NFTs into their platforms and functions. But before jumping into the metaverse experience, artists and companies should determine what content or works are best suited for this technology and what ownership rights they are willing to sell along with it. While a company filing a trademark application for its marks on an NFT can assist in protecting the mark online, if a company then relinquishes such control in an upgradeable NFT, or fails to embed a contract or any rights, a downstream user can potentially argue that the company waived its intellectual property rights and control. Yet the very flexibility of NFTs can also be an asset in that the tokens are adaptable, re-programmable, profitable in various markets, and allow for new experiences between different types of people and across industries.

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Our firm received a handful of these on “opening day” and found that the email notices were easy to navigate. The certificates downloaded easily via TSDR.

For those who would like a “presentation copy” of their trademark registration certificate, suitable for display and framing, these are available for free upon request to trademark owners who filed an initial application before May 24, 2022. Owners who filed an initial application on or after May 24, 2022 can purchase one for \$25.

Additional Time to Sign

Second, the USPTO has increased the time signatories have to sign TEAS forms from 14 to 60 days when using the “email text to second party for signature method.” This is particularly helpful for non-urgent filings sent to clients far in advance of deadlines and is certainly appreciated as we head into the summer vacation season!

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While the notice solicits research on the mechanisms associated with the use of cannabis and cannabinoids to manage cancer symptoms and the side effects of chemotherapy, it also seeks to fund research that would yield a “deeper understanding ... about how the tumor promoting and suppressive mechanisms of cannabinoid signaling influence cancer biological processes.”³ This research interest is notable to the extent it goes beyond the more traditional applications of cannabis in the context of cancer symptom management, e.g., pain and nausea, and perhaps signals a growing interest in therapeutic applications focused on tumor suppression and other mechanisms.

[1] Notice of Special Interest (NOSI): Basic Mechanisms of Cannabis and Cannabinoid Action in Cancer, NOT-CA-22-085 (May 5, 2022) available at <https://grants.nih.gov/grants/guide/notice-files/NOT-CA-22-085.html>.

[2] *Id.*
[3] *Id.*

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As of May 26, 2022, ICANN lists a new Sunrise period as open for the following new gTLD that may be of interest to our clients. A full list can be viewed [here](#).

.channel

ICANN maintains an up-to-date list of all open Sunrise periods [here](#). This list also provides the closing date of the Sunrise period. We will endeavor to provide information regarding new gTLD launches via this monthly newsletter, but please refer to the list on ICANN's website for the most up-to-date information – as the list of approved/launched domains can change daily.

Because new gTLD options will be coming on the market over the next year, brand owners should review the list of new gTLDs (a full list can be found [here](#)) to identify those that are of interest.

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