

NFT Domains

A New Technology That is Here to Stay

A new digital asset has arrived – NFT domains. The assets exist on blockchains, which operate as decentralized public ledgers with immutable data. Due to the flexible underlying technology, NFT domains have varied uses that are expected to increase in number and utilization. These domain names should not be treated the same as traditional domain names, which exist on centralized servers with associated processes and oversight. With limited trademark enforcement mechanisms available in the blockchain space, it is critical for brand owners to be aware of their risk exposure.

There are always risks with new technologies, but a thorough understanding can ensure that brand owners limit the negative impacts, while harnessing opportunities and staying ahead of the digital curve.

Key Considerations

- What are NFT domains?
- Are these domain names regulated by ICANN or centralized authority?
- How can we address NFT domains that infringe on trademarks or intellectual property?
- Should we buy NFT domains?

FairWinds Partners is committed to helping our clients understand and navigate this emerging space.

Blockchain Background

The first NFT domain was created in 2011, but an expansion of the NFT domain space did not occur until 2019. The last quarter of 2021 saw a large increase in the purchases of NFT domains, triggering a large growth in interest among third parties.

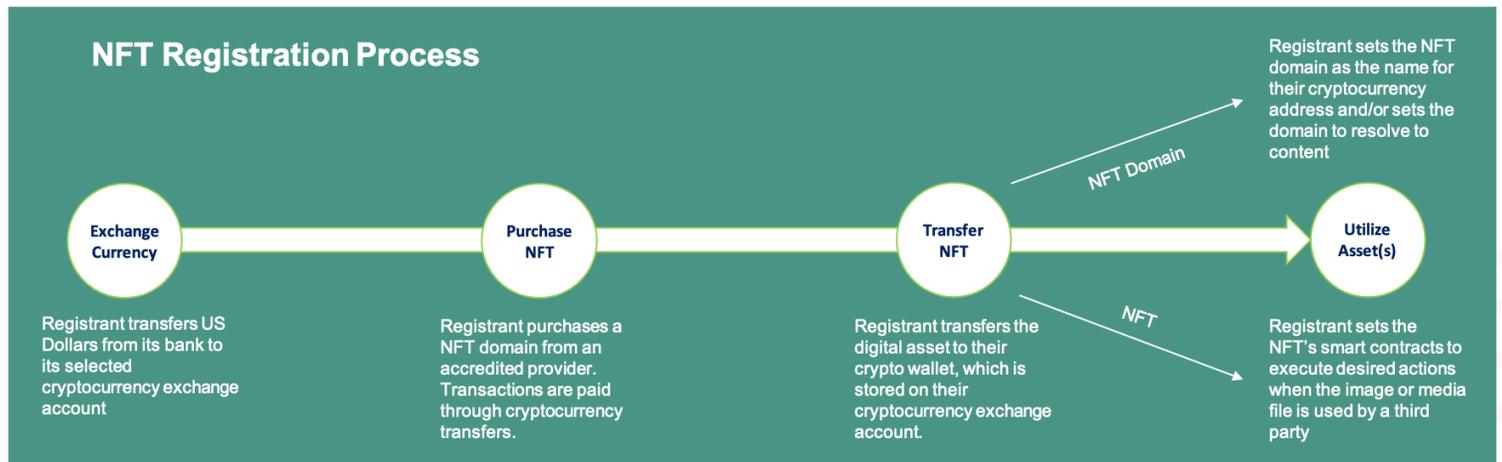
There are several key elements to blockchain technology which are outlined below:

- **Cryptocurrency** – An encrypted data string that is recorded on a blockchain and used as a store of value. Cryptocurrency facilitates peer-to-peer transactions in a digital format, without relying on central authorities like governments or banks.
- **Non-Fungible Tokens (NFTs)** – A non-interchangeable unit of data stored on a blockchain, which can be sold and traded. NFTs differ from cryptocurrencies in that each token is uniquely identifiable, allowing for automated validation of proof of ownership. Commonly associated with digital files including photos, videos, artwork, and audio.
- **Smart Contracts** – A computer program or protocol which is used to automatically execute or document actions without the use of a trusted intermediary. Smart contracts are used to quickly enforce agreements, and they are regularly used to enforce the unique nature of individual NFTs.
- **NFT Domains** – Smart contracts that are used to provide a name to blockchain addresses that would otherwise use complex identifying strings of letters and numbers. These assets are held in “wallets”, which act as digital accounts that store blockchain assets. NFT domains can additionally be used to display content like traditional domain names, although special browser settings are required to view them. These domains are notably not regulated by ICANN or any other centralized governing body.

NFT domains have several main uses:

- **Crypto Naming Address** – Provides a user-friendly name to a blockchain address, which can be used to send and receive cryptocurrency. This could be used to claim a connection to an existing organization.
- **Decentralized Website** – Functions like a traditional website, but the data is stored on a blockchain rather than the traditional Domain Name System. Specialized browsers or settings are required to view the digital content, but there are limited options available to limit trademark infringement.
- **Authentication** – Use of smart contracts to automatically validate data when conducting transactions or logging into digital platforms. This may become increasingly important as blockchain transactions become more widespread.
- **Online Username/Identity** – NFT domains can be used as an organization’s online identity on the blockchain.

NFT Registration Process



NFT Domain Management

NFT domains can be purchased in cryptocurrency or US Dollars, depending on the exchange on which they are sold. They must be stored in a cryptocurrency wallet, which can be created through the registration of an account on a cryptocurrency exchange.

Purchasing Cryptocurrency – Cryptocurrency can be purchased on a variety of online exchanges. This requires the creation of an account, which will automatically provide a “wallet,” which is used to store blockchain assets. Crypto accounts can be linked to traditional bank accounts, and cryptocurrency can be purchased using US Dollars or digital currency. Exchange rates fluctuate with the price of the respective currencies.

Private/Institutional Accounts – Cryptocurrency accounts can be set up as Private (connected to a specific individual), or Institutional (connected to a company or organization). Private accounts provide additional confidentiality which may be beneficial to organizations hoping to make defensive registrations without alerting the public.

Wallet Types – There are two main types of crypto wallets, which are used to store blockchain assets like cryptocurrency and NFT domains. Web-based wallets are hosted by exchanges, and are unique to each exchange account. They are always connected to the internet, ensuring ease of management. Desktop and Hardware wallets offer “cold storage,” where digital assets can be held offline. This mitigates security risks like hacking, but it increases the steps required to actively manage domains and cryptocurrency. Cold wallets are only recommended if an organization is holding large sums of money on the blockchain.

Purchasing NFT Domains – NFT domains can be purchased in cryptocurrency, and some providers allow purchases in US Dollars. The transfer of these assets to a new blockchain wallet requires “gas” fees, which are small payments automatically charged to cover the costs of transferring information on the blockchain. Gas fees must be paid with the primary cryptocurrency of the respective blockchain being used. Besides these elements, the process of purchasing an NFT domain is similar to the registration of traditional domains.

Viewing NFT Domains – When NFT domains are used to host online content, specialized browser settings are required to view them. Users can navigate to the privacy/security settings of their web browser, and add permissions to allow access to the relevant blockchain.

Existing NFT Domain Providers

There are currently four primary locations to purchase NFT domains, although additional TLDs and providers are expected to emerge as the industry continues to grow.

Handshake – Allows users to create new NFT TLDs, and to sell related domains. TLDs are sold in auctions using HSN cryptocurrency, using one-time purchases, and biennial operating fees.

Unstoppable Domains – Sells NFT domains under multiple TLDs using one-time purchases in US Dollars, with gas fees required to transfer cryptocurrencies. This platform has placed protective blocks on select corporate trademarks, preventing third parties from registering sensitive terms.

Ethereum Naming Service – Offers registrations on the .ETH TLD for specific lengths of time (1-10 years). Purchase fees, annual costs, and gas fees are paid in Ethereum cryptocurrency. .ETH does not place protective blocks on any names.

Solana Naming Service – Provides registrations on the .SOL TLD. Purchases are conducted with one-time fees, which are paid with Solana cryptocurrency. .SOL does not protect trademarked names.

Enforcement and Recourse Options

NFT domains have generated concern because courts that provide enforcement do not have clear jurisdiction. This exposes the risk that third parties can conduct trademark infringement or malicious activities online without clear processes to prevent their behavior. While Unstoppable Domains has taken positive steps by implementing protective blocks on corporate trademarks, none of the main NFT domain providers have offered support to reclaim infringing domain names or remove content that infringes on intellectual property. Traditional domain enforcement methods like the Uniform Domain-Name Dispute-Resolution Policy (UDRP) are not available for NFT domains, and litigation could prove expensive with a low likelihood of success given the international presence of blockchains.

Secondary markets provide a more encouraging scenario. OpenSea, the largest NFT marketplace, allows intellectual property owners to request that NFTs or collections be taken down due to trademark infringement. Additionally, it should be noted that the smart contracts associated with NFTs do not provide their owners any legal rights over existing trademarks.

Outlook

Microsoft’s annual security report in October 2021 labeled NFT domains as “the next big threat.” We expect to see an increase in the number of NFT TLDs, as well as an expansion of registrations of these domains by third party registrants. The risk presented by third party registrations of branded NFT domains will increase as NFT domains become mainstream. Due to the limited enforcement and recourse options, brand owners should develop a tailored blockchain strategy to guide NFT domain activities.

FairWinds Partners offers NFT domain services. See fairwindspartners.com for more details.