According to a recent report, the SEC is now targeting certain NFT uses. According to the report, the SEC is probing whether NFTs are being utilized to raise money like traditional securities. The SEC has reportedly sent subpoenas related to the investigation and is particularly interested in information about fractional NFTs. Fractionalization allows multiple people to hold (and trade) a share of an asset. Each share is represented by an NFT that represents a fraction of the ownership of or revenue rights associated with the asset. In some cases, this may meet the Howey test, which is one of the primary tests the SEC uses to assess whether a digital asset is a security.

Each matter is fact-specific, but there are at least specific three scenarios with NFTs where you absolutely should seek securities advice:

1. fractionalization

2. where NFTs represent a right to revenue stream (e.g., buy a tokenized song and get a share of future revenue from the song)
3. pre-sale of NFTs that have no current use (e.g., presale of game NFTs where the game is not built and funds are used to raise money to build the game).

Securities issues are just one potential legal concern. Each different NFT model can present unique legal issues. We strongly encourage companies who plan to enter into the NFT space to seek competent legal advice early in the planning phase to obtain a comprehensive legal review. Spending an hour or so up front to vet the legal issues can avoid subpoenas and legal issues down the road.

We are tracking a host of NFT lawsuits and legal disputes. Here are just some examples of the issues that are involved.

**License Uncertainty** - some NFTs were launched without clear license terms and now there are disputes as to what NFT owners can and cannot do with their NFT

**IP Ownership** - a number of disputes stem from uncertainty over ownership of IP upon which NFTs are based – Quentin Tarantino was sued based on *Pulp Fiction* NFTs alleging he did not own the NFT rights

**Trademark Infringement** - various lawsuits have been filed alleging the NFT used a trademark within the work without authorization

**Copyright Infringement** - various lawsuits have been filed alleging the NFT used copyrighted material within the work without authorization

**Title Slander, Deceptive and Unlawful Trade Practices** - at least one lawsuit was filed against an auction house for misrepresentation of ownership of the work underlying an NFT.

**Unjust Enrichment** - A number of celebrities have been sued for allegedly promoting a crypto “scam”

**Insider trading** - a high level executive at an NFT exchange was called out (and resigned) for trading NFTs on non-public information – while no charges were filed, it prompted the exchange to adopt an NFT insider trading policy (which we strongly suggest companies in the space consider adopting)

**Money Laundering** - a US Treasury Department report warns that NFTs are being used to conduct money laundering, including “self-laundering” where criminals purchase an NFT with illicit funds, transact with themselves to create records of sales on the blockchain, then sell to another party using clean funds.

**Sanctions** - OFAC Sanctioned a Latvia-based exchange, Chatex, for facilitating financial transactions for ransomware actors and designated Chatex and 57 cryptocurrency addresses (associated with digital wallets) as Specially Designated Nationals (SDNs). This was the first time NFTs have been publicly impacted as “blocked property” as one of the designated cryptocurrency addresses owns non-fungible tokens (NFTs). U.S. persons are prohibited from transacting with the individuals and entities associated with the designated cryptocurrency addresses or dealing in those NFTs

**Gambling** - some NFTs are acquired by or used in connection with gambling.