

## PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

### Episode 65: The new digital trading card: Understanding NFTs | Feb. 16, 2022

*The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.*

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the Protecting Your Possibilities podcast. I'm your host, Luke Fedlam, and I am excited to be back with you again. There is so much going on in the world of sports, there are topics that we could talk about for days and days. And I've heard from many of you, over the past weeks and months of various topics that you want to hear more about, learn more about, understand them from a legal perspective and a protection perspective. And that's great, because that's what we're here for. I mean, it is the Protecting Your Possibilities podcast, after all. So we're gonna make sure that we protect all the possibilities that you have to have a positive impact on yourself, your family and your community.

The topic for today is a topic that has come up so frequently over the last year - and that is the topic of NFT's. NFTs, also known as non-fungible tokens, really have taken the sports world and really just kind of the world by storm, when you look at the significant growth and engagement and value of the NFT market.

So you might be thinking to yourself, as you're listening to this podcast, as you're driving home or out for a workout, like what exactly is an NFT? Because you know, sometimes we have a word, and once you know what the actual letters stand for, then it's easier to at least understand what you're talking about. But when you just say non-fungible token to someone, it doesn't just automatically ring in their ears exactly what it is that we're discussing. So let's, let's break it down for a quick minute, what NFT's actually are.

From a high level, imagine a digital trading card. Imagine that you have a famous athlete that will typically have a physical trading card. Let's just say Babe Ruth, for example, right? You've got a physical Babe Ruth trading card, but then you make it into a digital NFT, which might include video, could include music, different sounds, different imagery moving around, they all can look different. But it's this digital side of sports memorabilia when we're talking about sports NFTs. Now, there could be artwork and other non-sports related NFT's there's 1000s and 1000s, hundreds of 1000s of them. But in the sports world, what we're talking about typically are things that are related to sports that have become digitized and are operate on the block chain technology and are backed by and purchased through cryptocurrency. So that's what we're talking about when we're talking about NFT's. Now, that may seem like a mouthful, so you may want to break that down even further.

When we break it down further, we look at it and NFT in some different ways. So let's just break down what fungible/non-fungible means, right? Fungible means that you can break that down

into multiple parts and still have the same value, if you will. So an example of something fungible would be a \$10 bill. If I gave you a \$10 bill, it's fungible because you could come back to me with two fives, you could come back to me with 10 ones, you can come back to me with 40 quarters, and we have exchanged the exact same value. It can be broken down in different ways, and that's how a traditional kind of fungible idea from a currency perspective works.

You could also look at it from the perspective of Bitcoin, that if you had a particular coin, whether it's Bitcoin or Aetherium, Dogecoin they equal each other based on their value. So you could say, okay, one Bitcoin, if someone gives me the equivalent in Aetherium, it could be you know, this is also volatile. So please don't accept this as any type of advice here, but it could be the equivalent of 17 Aetherium. Right. So, in that instance, digital currency is also fungible. But when we start to talk about non-fungible; an example would be; especially if something physical an example would be the Mona Lisa. The Mona Lisa, famous portrait that's hanging up in I want to say the Louvre please don't quote me on that. I think it's the Louvre in Paris, hopefully. But if not, you can go ahead and ask me and correct me on social media, but I believe that it's at the Louvre and the Mona Lisa has an incredible amount of value as a physical painting, but there's nothing that can give you that equal value. We can't take the Mona Lisa and cut it into 16 different pieces and just say, Okay, if I give you back these 16 pieces, we've exchanged the same amount of value, because you've just decreased the value one by tearing up a national treasure or international treasure, but it's not fungible, it's non fungible. Because of that it can't be broken down into two equal parts.

So on the physical side, we had actual hard currency, a \$10 bill, and on the digital side, we had Bitcoin. But now when we talk about it from an artistic perspective, we look at the Mona Lisa, on the physical side, if we look at artwork on the digital side, it would be an NFT.

So that's how the NFT's fit into this, this world and what non fungible tokens mean because it's a token because it's based and on technology around block chain, but then it's purchased or backed by cryptocurrency. So it's there's a token around it. So it's a token that's non-fungible. So when you have one of these NFT's, it is the only NFT, or rather, there is a serial number to prove that it is the only one of that particular NFT. Now, there could be a series you could have, you know, 10,000 of one particular NFT. But you'd have serial numbers, zero, you know, 0001, 0002, and so on and so forth. So that way, each one that you bought could be authenticated as its own, singular NFT.

Alright, so you're like, look, this is getting real complex, you know, so what are we talking about here in the sports space? Well, in the sports space, one of the most famous platforms, probably one of the more successful platforms in sports right now is NBA Top Shot. So the NBA, the NBA Players Association, along with Dapper Labs came together to create NBA Top Shot, which is where you have actual video clips of NBA players passing for an assist, dunking, hitting a three point or getting a steal or a block, right having basically a highlight. And that highlight is there is a video of that highlight, which makes the NFT this kind of video based NFT. Now you don't own the underlying rights to that video, right. And this is why it becomes so important from a legal context, because intellectual property rights really play a role here.

So there's no ownership transferred of the underlying video, because that would be owned by the league and its media partners. But there is ownership because there's a license now that's been granted. So there's ownership in the actual NFT itself. When we're talking about this, if you're kind of new to the NFT world, there are some significant, significantly valuable NFT's that exist, especially in the sports space.

So for example, when you go on to NBA Top Shot, and if you were to purchase a pack, and you bought a pack of multiple NFT's and let's say you maybe spent \$20, to buy a pack, or maybe it was a specialized pack, and you spent \$100 to buy a particular pack. And in that pack, you may have, let's say, three different NFT's that you get out of it. So you go on, you kind of open the pack, just like you would if it was a hard, you know, trading cards, and you got to open it up. And back in the day, there was maybe a sticker bubble gum in it, right. But like, in this online version, you go on, you open the pack, and maybe you spent \$100, let's say, but if you were to pull a LeBron James NFT, instantly the value is in the six figures range. If you were to log on to NBA Top Shot, you can see that this goes beyond just being a traditional fan. There's a lot of speculation going on, right in terms of like financial speculation that if I buy something at a low price and can turn around and sell it for a high price, I can make some money here. And that's what a lot of people are doing when it comes to NFT's.

So NBA Top Shot really big in this space. The NFL is coming out with their version, they partner with Dapper Labs as well, it's going to be a bit different. They've said then what the NBA Top Shot platform looks like. But it's going to be very similar in that it will be an NFT platform for NFL players. And we have seen other leagues from international soccer leagues and other groups come together and create NFT's of their players. And so just so we understand how the economics work. Everyone shares in that, right. Everyone, when we talk about NBA Top Shot, everyone shares in the value here. So when an individual buys an NFT pack, let's say on NBA Top Shot, and we'll use my previous example and say they spend \$100. So of that \$100, there's a percentage that's going to the league, a percentage that's going to the Players Association, a percentage that goes to the actual individual player, and a percentage that goes to Dapper Labs. So when you take all these percentages of \$100 We're not talking about significant money here, but the value in NFT's are that when you resell them for a significant amount. That's when everyone starts to make more and more money and it makes this NFT world a bit more interesting.

So now using that same example if a LeBron NFT gets pulled in it gets resold in their marketplace for \$100,000, of that \$100,000, now, there are percentages that are being shared and those percentages continue to increase etc. So that's how you start to see the model here work.

So let's talk about name image and likeness and NFT's because there are a lot of questions around college student athletes participating in NFTs. So a couple things to think about. Number one, you've got to understand with an NFT, how are you getting compensated, there's value in an NFT because it can be tracked, and a percentage of a sale can happen, even down the line in the secondary and tertiary markets. So if you think about it, you know, I read someone, someone had a great example, online that I read recently that talked about imagine college textbooks, right? So you go, and if you were to, you know, when you buy these college textbooks, you purchase them for you know a lot of money, you use them in your class, and you turn around and you try to sell them back to the bookstore. And if a new edition, if this, if that's an old edition that you have, and a new edition is now out, you know, you've really lost significant value at the resale level. In fact, you might not actually even be able to resell it back to the bookstore. But if it was, this was all digital, and if it was digitized, then ultimately, you can have a situation where you have a digital textbook, and the author of the textbook continues to make their royalty, the editor or publisher of the textbook would be able to get their royalty, the bookstore who sold it, right who made the NFT book available, right would also be able to get their percentage, and the student athlete when they went to turn around and resell it in a secondary market would be able to get a percentage as well. So you can see how there's value upon later sales that can be distributed to all of the interested stakeholders that are involved.

So for student athletes, it's so critically important to understand, how does the money flow when someone is presenting you with an NFT deal as it relates to name, image and likeness. Understanding that compensation model and how that money flows is so important when negotiating that deal to make sure that you are as you as a student athlete, as your value increases, maybe you have a great season or a series of great games, maybe you go on to play at the professional level, your value may continually increase, which can create more revenue driving opportunities for you as you share in a potential royalty for an NFT.

The other thing to think about is making sure as a student athlete that you are protecting, not just your own intellectual property, but that you are not infringing on someone else's intellectual property. So a college student athlete can't just go and use the media, like video from a game in an NFT. Right? That media is owned by the conference, maybe it's owned by the NCAA, it just depends on who's airing it, but ultimately, that it's already owned by someone else who is not the student athlete. Also thinking about using a the jersey of a school or the institution you go to there has to be permissions granted for that to even happen. And so, again, making sure that in the creation of an NFT that that the student athlete and really the development company that's developing the NFT is not infringing on the rights of a mark holder, that's going to be really important.

And then finally some lasting thoughts as it relates to student athletes and NFTs. There is a significant issue that the federal government looks into regarding NFT's around anti-money laundering. And that is something where even just ripped from the headlines here recently there have been people who have been arrested for money laundering schemes as it relates to NFT's and cryptocurrency. So really understanding who it is that you're actually partnering with is important.

And also the volatility. Cryptocurrency is a volatile market. Understanding that volatility can be helpful when thinking about how you're going to engage potentially with an NFT or with a company that wants to do an NFT with you, that's going to be really important because whatever currency is being used, you know, the volatility of that currency can play a significant role in the value of the NFT.

There is so much that we could talk about when it comes to NFT's and sports. We're seeing it more and more we're seeing it occur at the college student athlete level because of name, image and likeness. And we are going to see more and more colleges and universities getting into the NFT space because to their fans, to their donors, to their alumni base - they can go out and sell and NFTs with various digital assets that they may have related to their athletic department, to people who want to buy those things right, which there are their fans or potentially even those who are speculating in the marketplace trying to find a way to profit off of it. You know, buying low and ultimately selling high in this space. So a lot of information here, but there are a lot of things to be mindful of when it comes to NFT's and athletes, you have to make sure that you have competent counsel to advise you through the NFT process so that you don't get taken advantage of and so that you understand and ensure that you are protected throughout that process.

So again, I really appreciate you tuning into this episode. It's something that's just come up so many times with various listeners of the podcast. So thank you for that. I just got a text today from someone who gave me three different topic ideas of what they want to hear on this podcast. So we're going to try to accommodate as many of you as possible and always try to present information that is current in the marketplace in a way that shows how we can help make sure that athletes are being protected, and not being taken advantage of because you as

an athlete have a unique ability and not just at the pro level, but now at the college level as well. By making the right decisions, you have the opportunity to make a positive impact on yourself, your family and your community. And so we want to make sure that you're protected while you do that.

So again, thank you for tuning into the Protecting Your Possibilities podcast. I'm your host Luke Fedlam. Please do feel free to share this episode with others in your network, and definitely tune in again soon. Until then, have a great day.

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