

**Eric:** Hi, this is Eric Hess with The Encrypted Economy. So before getting into this week's episode, I wanted to talk a little bit about what's been going on in the U S Capital this past week, Chairman Gensler to the SEC, sort of laid out his plan in this Aspen speech about how he wants to regulate or enforce against crypto and get more resources and all that good stuff.

The infrastructure bill was put before the Senate and had all these crypto IRS reports provisions in it that were kind of extensive, probably weren't the best thought out. It was really a bad decision, and it almost overturned the entire infrastructure bill. And even then it wasn't revised the way that it should have been broken.

It doesn't work. It's unfortunate. Um, sometimes it's the way politics works, but anyway, we're going to be talking more about that in the coming weeks. There's a lot of news about it. This is not a news channel that we will do more in-depth coverage and provide some insight into what to expect going forward.

But again, just because we cover it doesn't mean we're a crypto podcast. We are an encrypted economy covering encryption as well as digital as a digital assets digital data. Anyway, so today we have the pleasure of talking to Nelson Rosario on the podcast partner with Smolinski Rosaria law. He's got an expertise and the cross section between digital assets and intellectual property started with some questions.

What is non fungibility in NFT? Do NFT purchasers even know what they're buying? How difficult is it to enforce copyright laws across jurisdictions when it comes to entities? Because of course their jurisdiction less. And then we talked about where do entities live? Meaning where are they custody? Where are they stored?

What happens when they don't live there anymore? What happens if there's a change in custodians? If the chain is immutable, but the media doesn't persist, it doesn't matter. We talk about cross-platform royalties, the subjectivity of art and NFTs for value. Are you talking about the promise of entities for authenticating property rights in the physical world?

Now, a few weeks ago, we did an episode with so most in general bank where he talked about associating genomic research with an NFT, but that was a fascinating episode. I encourage you to listen to it. This is not that episode. This is we're talking about NFTs as it relates to art. As it relates to music, physical world assets, it covers a lot of topics.

It's great to talk to Nelson about this. He certainly has a command of the issues across all these points, and I hope you enjoy it as much as I did. And if you'd like to show, put some comments in it, share the word, spread the good word. The show is getting picked up more and that's encouraging. I like to see that definitely listening ship is going up.

So please continue to spread it out and share it with others if you like the podcast. Now, before I go, transcripts. If you want them, go to [TheEncryptedEconomy.com](https://TheEncryptedEconomy.com). This is not a promo because I don't make any money from it. I'm just the whole reason why I keep that website open is I'm already covered on YouTube, I'm already covered in podcast channels,

but if you want transcripts, that's where they are. If you don't want it, I can take it down, but I'd rather give it to you if you want it. So, I want transcripts go to [theencryptedeconomy.com](https://theencryptedeconomy.com). You'll find them there associated with every episode. So, with all that said, let's start the show with Nelson.

Welcome to The Encrypted Economy, a weekly podcast featuring discussions exploring the business, laws, regulation, security, and technologies relating to digital assets and data. I am Eric Hess, founder of Hess Legal Counsel. I've spent decades representing regulated exchange, broker dealers, investment advisors, and all matter of FinTech companies for all things touching electronic trading with a focus on new and developing technologies.

So, this is Eric Hess with The Encrypted Economy and today we're really excited to have Nelson Rosario from the law firm of Smolinski Rosario law on the show where he's a Principal. He is also an adjunct law professor at Illinois Tech. Nelson, welcome.

**Nelson:** Uh, thanks for having me, Eric. I'm very happy to be here and, uh, looking forward to our conversation.

**Eric:** Excellent. So, we'll start out like we always do. Maybe, tell us a little bit about your background and that before we get into the, uh, into the show.

**Nelson:** Sure. So yeah, I'm a co-founder of Solinski Rosario law.

We're based here in Chicago, Illinois, and we're mostly an intellectual property firm that also does general counseling services for small to mid-sized tech companies. Decent amount of our business is, uh, crypto clients that are doing a variety of things with the technology. So, as you mentioned, I'm also an adjunct law professor at Illinois tech, where, uh, I teach a class called blockchain cryptocurrency and the law that actually started it January of 2018. We announced it right before Bitcoin hit 10,000, the first time in November in 2017. So that class has had a lot of interests, but, uh, that's kind of the, I guess, the boring, uh, typical lawyer answer to a little bit about myself. Um, Slightly different path to becoming an attorney. So, like most lawyers, I got a degree in history and political science, but then I started working for a while.

My wife was in grad school, and it was while I was working in elections, actually I worked in election administration. So, I was a lowly county government employee. That I first got interested in tech and the law and kind of how they all interplayed. So, I started looking for legal jobs, that would be able to kind of scratch that itch.

That's when I found intellectual property. And so, I realized, oh, I really do well to have a tech background. And so, I went back to school while I was working like an idiot, um, and got a second degree in computer science. And the rest is kind of more or less has, has fallen into place along the way.

**Eric:** Excellent. Excellent. So today we're going to be diving a little bit into NFTs. Uh, we talked about NFTs with some other guests, so we had Donna Ridell on the show. We touched on it there. We had mark Boiron on the show where we talked about NFTs and

what makes them securities. So today we're going to be diving a little bit more into NFTs the property.

Like what do you get? The license, the ownership, and all that, all that interesting stuff. So, but before we even dive into that, let's talk a little bit about the fungibility. Uh, NFTs because, it's easy to pass over. It's like, oh, fundable is, it's not, one-to-one non fungible is it's one-to-one I guess something very unique.

I can't trade it for anything else. And it's like, okay, I have people get it and they move on. But in fact, it actually has relevance because, and if these is sort of a broad category and as you start to tease out the different elements of it, what actually is fungible and non-fungible for any particular use?

It has relevant. So, I'll just take a real world example. I like Gordon Haas. He's a bucks county painter. I've met him a few times. I own a painting by. I also own a number of lithographs because I can't keep buying paintings by him I'll be broke. So, I have a low double digit series numbers on the lithograph out of 250.

That one's pretty easy. My lithograph 34 out of 250, that's non fungible. Nobody would even question it now, but let's change a fact pattern. Let's say Gordon uploads, this my 34 out of 250 to the internet, and now he launches millions of it, but they're all. So, 5 million and you can get number 34 out of what did I say?

5 million, 5 million. Is that still non fungible?

**Nelson:** I think that's a great fact pattern. And I think this concept of fungibility is something that is intuitive. Basically everyone, but I think it's a concept that you don't really start digging down deep into until you fall down the rabbit hole of crypto.

Like so many of us have, because as you said, there are certain implications raised by fungibility. I mean, at its core. This idea of a guarantee of a certain level of fungibility is kind of what drove Bitcoin to be created in the first place. Right? This idea that you would actually know for certain that I didn't send, five Bitcoin to my partner that I'm claiming I sent to you.

And so now we're seeing these issues come up again with respect to NFTs and. I think it depends on, where someone sits. If someone, I think it's a perfectly reasonable position for somebody to say, if they're more than one of something it's fungible and a non-fungible tokens, there should only be one of it.

Now that doesn't clearly translate to the traditional art world. Like you were saying, there are, there is value in that limited series of paintings and other works of art. And, but where do you draw them? Just the sheer magnitude of 5 million digital representations of this does have that.

**Eric:** We're trying to, if we're trying to get to the magic number, which of course there is no magic number, right know, as Gordon says, I did 250 of these before I'm going to make them digital.

And Eric is still going to get number 34. He does an airdrop. He does the artist airdrop. If you own the original lithograph, you get an S a great idea. Somebody should pay me for that if it makes sense, right. But I get an airdrop of his digital representative, his NFT digital representation. Number 34 might be worth more than 249.

Uh, number one probably might be worth the most. So arguably within that number series, The order might actually mean something. But to your point, once you get to 5 million, you're not going to be seeing any kind of meaningful distinction. If I own, 4,000,001 and you own 4,000,002, nobody's going to be like, yeah, I'll trade I'll.

I'll swap my 4,000,002 for your 4 million or one. Plus \$10,000. Cause I really want the one, unless there's like a magic to the number, like sometimes like some numbers have significance like a birthday of an artist,

**Nelson:** but I think this brings up a broader point with respect to NFTs, just kind of as a Jew in general, as we've seen them out in the wild, in that, this is really related to it.

And art is just fundamentally subjective. And so, it just so happens. There's a lot of financial value that is tied to this, and it's kind of been born out of a system that really was financially driven initially, and is now expanding into other areas, but you're never going to really get away from that subjectivity with respect to pieces of art.

I don't think so. If you have a ravenous fan base, That thinks all 5 million NFTs are worth, whatever, then that's what they're going to be worth. I mean, it's almost kind of a more difficult question then, the, the question always comes up with respect to cryptocurrency. What is money? Well, money is whenever people say it is, this kind of gets to, well, what is art and why does it have value? And you're never going to get an answer.

**Eric:** Right. Well put, but I, I think it, it sorts of touches on, this notion that NFTE certainly can be distributed to a point where they become fungible because they no longer have unique value in and of themselves.

They're easily transferred for one another for the exact same value with actually no difference. Okay. So then let's sort of start to touch into property rights within an FTE. So. Just to sort of break it down and I'll throw out mine, but I'll, I'll look to you to refine it. On the one hand you have an NFT that represents, or it's connected to an image and there is a value associated with that image or what that image represents on the other end.

It's, it's more akin to authenticate it. Evidence of some other rate whose value does not necessarily lie in the image itself. Like for example, a notary seal on a. And then probably where the universe lies in terms of use cases and value, is the continuum between those two points or is it broader than that?

Like your, what do you think?

**Nelson:** Yeah, I mean, I think it depends on the particular terms and kind of understanding around any of these transactions. From what I've observed, it seems like NFT purchasers. A

lot of them believe that they're getting a lot more rights than they are necessarily in the NFTs themselves, but not just the purchasers.

I do think that, when it comes to individual artist, They're often trying to give as many rights associated with the underlying artwork, uh, in the sale of the NFT. Um, I think there's an open question as to, okay. How do you do that in a way that a court of law will actually recognize it? Right?

Cause like when the rubber actually meets the road, That's what's going to matter, the, and that's why there's a bit of a misalignment in the market in terms of what people think they're selling, what people think they're buying, and also what the platforms think their responsibilities or rights in any of this may be by facilitating all of these transactions.

I think in a sense, the most kind of straight forward approach we've seen so far are from the NFTE sales. That had been done by big brands because big brands have a very different risk profile and set of considerations than individual artists or, uh, individual purchasers and they more or less have kind of taken a line.

Okay, we're selling you this NFT. It's one of five related to this piece of artwork as part of a promotional program. You have rights to display the NFT, you have rights to possess it, and that's basically it, we're not giving up any sort of underlying intellectual property rights now, in this universe or any other discovered universe in the future.

Uh, and you're just getting this NFT, that's kind of like the easy answer. The more interesting question becomes, okay, well, what if I'm a digital artist and I want to transfer all of my copies. In the underlying image. And I want it to be recognized in as many jurisdictions as possible because I want the purchaser to have, a high degree of confidence that there'll be the recognized owner of the art and the NFT.

Well, that gets a lot trickier, to a certain extent intellectual property, copyright. In particular has been kind of normalized across jurisdictions, but not completely. It's not like there's one set of copyright rules that you have to follow to be able to assert that you're the lawful copyright holder in the artwork itself.

And in a certain sense, it's not that different from the traditional art world. Right. And the example that you gave before, you have a right to display that painter's work in your house, but if you hung it up in a local gallery, And he found out about it. He's going to have a cause of action and probably be quite

**Eric:** upset.

Yeah. Especially if I marketed it as an original, but if I market it as a lithograph, I could resell it. The art world is interesting because for example, when I bought this lithograph, I didn't sign it. I paid him cash, which maybe that's an AML issue. I don't know, but I'm kidding. It wasn't that much cash story.

Um, I paid him cash and I got the painting and so possession is what, nine tenths of the law. So, we're in this case, all of it, I own it. I mean, if I, if I try to market it as my own. Okay. I

think there's definitely a copyright issue there, but you tell me, I mean, if I chose to display it in a gallery, not as my own, I'm probably okay.

Yeah,

**Nelson:** you're probably okay. It's when you are then trying to kind of profit as if it was your own work of art, and this has kind of been a problem, actually plating the NFC platform so far is that famous artists are putting out an NFT series and then. People are copying the images and then they're selling it on a different platform as if it was their own artwork.

And it's difficult for these artists to try and combat that problem. They're reaching out to the platforms and by and large, it appears the platforms are doing the best that they can, but the. Going through that nefarious scenario versus you, pretending that you are the other artists or that you created the artwork, the physical artwork is it's quite different.

The scale is just not the same.

**Eric:** Right. And then it gets to the question of like, if the purchaser isn't controlling the link, isn't controlling the server, then the server is in control of. Whoever it is, we could be the artist. And I think there was even one sort of comical case of an artist. And I don't know all the details.

You might be more familiar with it, but he basically, he had a painting or something and it was purchased on, I guess, open Caesar wearable or what have you. And then after the purchase, he substituted the image. With an Oriental rug, sort of capturing this notion of a regular rug pole, but it was, it was, I don't know whether, what back it was really.

It was all, apparently it was done to really highlight the fact that the link that you have, you can't take that image with you necessarily, presumably there's a contract for that, but what do you get when you. Done a transaction online. And how would you even enforce that?

**Nelson:** The storage issue is a very big issue because do the platforms want to take on all the liability of hosting and whatever server configuration they have all of the digital artwork that is associated with the NFTs and then maintaining it and making sure that it's secure.

And that nobody can hack in and change all of the images or just delete them all. So, I'll, everyone's getting broken links when they're trying to display their NFTs, is there some sort of other storage solution that would be amenable to individual artists wanting to actually host it and, deal with all of the kind of technical problems that, that arise that, that can bring up and same thing with, companies, et cetera, uh, in a certain sense, an NFT.

At first blush seems fairly straight forward, but when you start asking kind of pointed questions, okay, well, where's, where's the underlying art going to live? What do you mean? Okay, well, is it going to be on the platform server, all these different storage options. Okay. And what exactly are we trying to sell here?

Well, the NFT. Okay. Anything else? What do people. Think they're purchasing, that's why it seems like the space matures. Unfortunately, there's just going to have to be a lot more lawyering done, which is never the answer people want, but, for high value, if runs, etc., and

as kind of long running ones, there are going to just have to be lots more agreements in place that are very explicit, and we haven't even talked about, what happens with if the underlying platform, one of the platforms. Goes out of business. Okay. Well, presumably the information is stored on a blockchain somewhere. It could be a theory and it could be, there are other platforms that are offering this can, one of those platforms use that information that's stored on the underlying blockchain and then display it and resell it.

Could they, just create a viewer for somebody that's persistent beyond, the sales platform. Maybe, I don't know. What do

**Eric:** you think? Yeah. I mean, it's, it's, you would think that as you deal with maybe higher value NFT sales, that ultimately we move to the purchaser also taking responsibility for.

Maintaining the storage where that is because at the base of it, you would think, I mean, again, there might be some infrastructure component to it, but if it's stored on like AWS, your number one, AWS, while I think most of us would think that AWS doesn't disappear. But, we're talking, we're talking about stuff that, but you know, if you're thinking about like a NFT, like a painting, which you want to pass down to your children, who's to say Amazon's going to be around and, you might find out, a hundred years from now, now, obviously that's not you, but your kids, or they're their kids, they're like, oh yeah, grandpa bought this NFT way back when, and he passed it through the lineage.

And oh, AWS got acquired by what they got acquired by Eunice swap in the year 2034. Uh, and then unit swap got acquired by a, a Russian prince, uh, like the world changes and all of a sudden, like nobody can figure out where things lie. And if you're not the one who like, if you have the property right, and you're maintaining it, then it's shame on you.

You should just be like, oh crap. AWS is being acquired by unit swap. By the way there's no breaking news here. This is just a ridiculous hypothetical, like which may, may ultimately not be ridiculous, but at any rate, you have the responsibility for taking that action. But if you're relying on somebody else, like they're selling the, not to your point, like, if I'm selling a whole bunch of NFTs, am I going to be focused on everyone?

I'm going to be focused on the set, but let's say my business doesn't go well to your point, or there's a transition, we certainly know that during transitions things get dropped. So, a hundred years from now, the NFT that's supposed to last for a hundred years. What happens to it? Like if I'm spending, like whoever blood people for, 6.9 million or whatever, or some other similar things like that, where it wasn't really a trade, a trade, it was more of a, I'm going to buy this as a store of value.

If you're buying it or is a collectible, something you want to appreciate something that you want to enjoy, something that you want to pass through your family. It becomes very important.

**Nelson:** Yeah. And I think you're exactly right. If it's if this is something that you. Want to take every precaution to make sure it persists, then.

Right now. Yeah, you have to come up with some bespoke self-custody plan. I would think it would be interesting to know if any of the custody services out there are trying to develop and Ft custody services that would address this need for people, because it's one thing that custody crypto, large amounts of crypto, but it's quite something different I believe to try and custody this.

Because of all the associated information, right? I mean, I suppose the simplest NFT sale is just, there's a link to a digital image somewhere. And so, you just got to make sure that you, the link is going to persist, which if it's on, the Ethereum blockchain as a part of the transaction, you should be fine.

One, one thing. And then it's just, okay, we've got to make sure that we can actually save this digital image, but you know, if you've used technology for long. Period of time, file extensions and different types of files change over time. And so then, how are you maintaining compatibility moving, moving forward, and maybe that's not as much of an issue at the moment, but to your point in 50 years, I mean, is everyone going to be still using JPL?

I mean, maybe, maybe JPEG is the, the picture format for the galactic empire moving forward. I don't know. But would you want to bank on that? Probably not.

**Eric:** Yeah. And, and I mean, to use another example, which, which is totally, I just thought of, so it, it, it may be like just too silly, but a number of years.

About 20 years ago, my father and I, we got genealogy software and he, he got busy, like scanning everything in well that genealogy software has changed multiple times such that honestly, I don't even know what happened to all this stuff we had. I did ultimately get its PDF scan than whatever and retained.

But that whole framework of how things are interconnected and everything else, we kind of had an assumption like, Hey, we do all this work. We're not going to be like genealogists for the next 20 years. Right. And then, fast forward, it's like, oh, the software has been upgraded like a bazillion times.

And unless I was like, hyper-focused on it, like now I'm. I've got end of life. That's no longer supported and there's no way I can get back to that original structure. And it was like, okay, that didn't quite work unless I sort of saved it on my what, my 180 6 in a corner, somewhere, my defunct computer, I sold boot that thing up, which I'm not.

So, it's, I think it's the same kind of thing. Like, frameworks and technology changes. And the players change as well. So, it, it raises those questions, and can be as concerning as when you get like a 4 0 4 error, when you try to access your link. Right. It's like the link is broken and it's like, oh, what happened here?

And that might be the first, about that. You've got a problem.

**Nelson:** Right? Right. Yeah. I actually, I saw something recently that was talking about, more or less everyone has transitioned to streaming services if they listen to music online and

there's basically just a huge swath of. MP3 files from artists, from all over that just didn't make the transition.

And so now it's kind of, it's like a, just a loss collection out there, like you were saying. And if you weren't hypervigilant to make sure that, it was maintained across your systems over the years. Well, too bad, I mean, that's the interesting thing is, a lot of the crypto space is as it gets more digitized and we're relying.

Well, we to maintain that across electronic systems that change over time. I don't know that we've necessarily had to do that all that much in human history, short of perhaps, language translation for it. But ever since we invented writing, like that's a pretty persistent form of data storage, electronic data storage, the formats change so frequently that there's probably a graveyard of NFTs that are sitting right there that just haven't.

Gone in the graveyard yet.

**Eric:** Right? I guess it sort of bleeds into another point, which somehow resolves the ability of property to transfer with the NFT, but may not have the longevity, which is like these hash related functions that are actually built into the NFC protocol. My crypto kitties, where there's some component that is unique to the NFT.

Can't be replicated. So basically, you have those, those hash related functions that allows you to compile it in a unique way, but again, it requires it being supported. So, the good news is you got something that, that only transfers with the NFT, but you know, like the 180 6, where's the 180 6. Now how many people are, are booting up 180 6, uh,

**Nelson:** I think it's not the

**Eric:** mental, I don't, I don't have a 180 6 anywhere in my vicinity.

Uh, the old Commodore, um, unless you're like really retro, right? What are the trends that you're currently seeing in the NFTs where the, the property rates or even the royalty rates are being further delineated in a way that's either within a platform or cross-platform?

**Nelson:** Yeah. Well, I don't know that we've necessarily seen yet a lot of platform activity and, correct me if I'm wrong.

I think the majority of the royalty rights that have been associated with entity sales are somewhat dependent on the platform. Just honoring it. I remember there was kind of a kerfuffle, not that long ago where some artists specifically wanted royalty for secondary NFTE sales of her work. But it was on a different platform.

And she reached out to, the initial sale platform saying, Hey, this was part of the agreement. And I realized, this is not occurring on your platform, but you know, are you going to make good on, on this? And there's a question of, well, does the platform even have to make good on that? Right.

Is the, is that necessarily part of the agreement that they had with that artist? I don't know, you'd have to look at the, the actual agreements, but that would be a very interesting result.

If you end up with an ecosystem of platforms that are collaborating in a way to make sure that they're all kind of honoring each other's royalty programs, however, they may realize that, Hey, this is a really cool.

Idea, but for us, we just don't even want to touch any of it. So, we're just going to specifically disclaim that away. We're not even going to bother, it's too complicated. I don't want to pay my lawyers to even make sure that, we can do it, let alone, make sure I'm protected, because with all of this stuff, there's the technical side of it and there's the legal side of it.

And to a certain extent, I think the answer is often the technical side of it is a bit easier to actually. For people to do. And it's the legal side of it, where these kind of technical realities crash in the meat space that you have problems, right. I know there have been multiple efforts to try and build licenses into the NFT sales themselves, sometimes trying to get as much of that on chain as possible.

And I think that'll be an area of growth because I do think that there's a lot of demand in the space for that from. And if these purchasers and from artists alike, who are trying to make those sales more enticing, I would think by saying, no, you are, you're not just getting out of it, you're getting the copyright associated with it, or you're getting a, a license that goes beyond, kind of what you would expect for a normal NFT transit as far as at a baseline, what you're purchasing.

You're buying the NFT and that's some sort of token that people some people say it's a receipt. Some people say it's a certificate of authenticity, not to be too early. We have, I don't know of any case yet any litigation that's tried to address what it is legally speaking, other than, Hey, this is some sort of crypto token that has particular characteristics, depending on its creation and what blockchain is associated with, and so I think. You, and I may have to wait, uh, uh, some professor or somebody who writes way too many academic articles through Hingis to actually write out a paper, explaining the 12 different varieties of NFT legal standing. I, I don't, I just don't think there's really a straightforward answer.

We're still very in the, the facts and circumstances phase of this until we get kind of. Standardized templates on the technical side that are matched up with standardized templates on the legal sides. So, there's, there's kind of more of an alignment of exactly what's going on. And part of that is, I think in this, Y this, this podcast is valuable, especially for the crypto space in general is a large part of this is just educating the legal profession of the technical realities, like, okay.

This has. On the technical side, this is what one of these transactions means. This is what's actually occurring. Are there, and, and it's, it's really an issue, spotting exercise for lawyers, which, that's kind of one of our primary training programs, right? But if they don't fully appreciate, what's kind of technically going on with respect to, sales that they're advising clients on platforms that they're trying to, help navigate these issues.

If they don't really get down to the kind of the brass tacks of the technical reality. Then the legal advice may not fully align with what they think they're giving. If

**Eric:** that makes sense. And I think on the royalties, I'm pretty sure that open season referable do have an integration that allows them to recognize a royalties cross-platform.

And I know I read something a while ago about there being some work about trying to actually limit the transferability to platform. That don't within the NFT, like some sort of we're a blocker and I don't know how that would work, but it would, that gets into more complicated, quick questions.

Cause now you're restricting somebody's ability. Like did they buy it recognizing that there would be limitations on it that were imposed and it's not free and clear, but that's something that's I know is being discussed and on the, on the platform integration, like we. Talk a little bit beforehand about open seas, doing a raise with a 16 Z or Andreessen Horowitz.

Uh, and before that, I think wearable had also speaking verbal another, uh, large raised there's definitely venture money flowing into this space. Mark Cuban is active in a number of projects. The vehicle boss, the Winkle and Winkle losses with their platform. Is it nifty is, or?

**Nelson:** I think it's.

**Eric:** Nifty gateway.

So, there's, and, and so all these different platforms are going to take different technical approaches, but, I wonder for platforms, like, I think referable might be a very good one just because they seem to be focused more on the unique NFTs is a truly unique as opposed to the series based NFTs.

That might be one where when you buy the NFP, I just wonder it's like, I wonder if it's almost. Before you buy it, you get to click on a list. Like, what am I buying? Like I'm buying, maybe there's only like I can take the whole thing off for like, this amount of money, but maybe I don't want to like, maybe I want a license and maybe the next person who comes in, who wants to take it out is taking it out.

But has to, is taking a subject to the license. That's already been created under another one, which might be a risky proposition, but it gives them some sort of enforceability, it'd have to be some creative lawyering. Cause now you're T you're dealing with an instantaneous transaction and you're trying to build in all the different rates, but I mean, do you think that's something that a platform like it doesn't really have to be wearable, but you think that's something that a platform that focuses more on that.

More one-to-one type NFT or one to a few might attack or, or like, or do you think we're going to be just sort of in the wild west for a while and when lawyers get involved, they get involved in, what are your thoughts?

**Nelson:** Yeah. I mean, I think, I wouldn't say it's a complete wild west. I mean, it's, but it is wild west to a certain degree because there are legal considerations associated from the traditional art world that kind of have bled into this.

And the people building the platforms are not necessarily coming from that traditional art world. And I think. That may be why we've seen kind of traditional collectors, big name collectors, avoid NFTs up to this point. Not completely, but you know, they're used to dealing with a marketplace that has.

Centuries of kind of norms and legal regimes built up around it. And it's not like this is all being written from whole cloth and it's, there's nothing that we can expect to actually bring in. It's just where are those pieces going to fit in? And so, I think that's an interesting point that somebody like rare will or another platform could take, Hey, we're going to be buttoned up.

Isn't the right word, but we're going to focus on, these are legitimately, there's only one of this. Oh, by the way, we've also built a technical infrastructure and legal infrastructure around it to give a higher degree of certainty to that exclusivity. I'm sure there's plenty of people that will pay a premium for that.

I mean, that's just an interesting idea of, we could sit here and riff and try and figure out. Okay, well, what are some of the characteristics of that, what that would look like? And I think you listed some of them, but as you really kind of have to start drafting up an agreement.

Okay. Well, this is what we are. We actually covering this and, the developers would have to make sure, okay, is this even possible, for the underlying blockchain that we're running. Well, this contract even work, and those are questions that you would ultimately have to be addressed.

I think that it would be an interesting outcome and not necessarily bad or good. If we see some sort of bifurcation of the market where you have basically kind of, for lack of a better example, uh, the eBays of NFTs, where it's just. You could sell NFTs of all different types, series, unique, whatever, and it's a much more volume-based play versus, Hey, we have very particular exclusive selling points and, um, that's where we make our money and that's where we attract interests.

It'd be interesting to see how that kind of shakes out. And I do think all of this, the injection of all this cash from venture. It says probably two things. One, this is a frothy market. I'm not saying anything. I don't think anybody would disagree with, but at the same time. And I do think it indicates, well, there's something there's a, there, there, right.

There's something here. I do think that it's funny because you mentioned crypto kitties earlier and there's also crypto punks and those are really. The original NFTs and they've been around for years. Right. But no one outside of crypto care, like it was a big deal when it happened.

It was cool. And it was interesting, but like normies didn't care about that. Honestly, I think the success of, the NBA top chef. Program, uh, starting more or less in December of 2020 and kind of bleeding into the beginning of this year is what really kind of started drawing in mainstream interests.

And, as long as there's going to continue to be decent UI in terms of purchasing and creating these things, and it gets better, and these questions continue to be worked out. Who knows how big the market is? I mean, human beings have been collecting things forever and the art world is not small, and if you think of this as kind of bragging rights, right, you're purchasing some form of bragging rights. Well, people will pay a lot for it.

**Eric:** Yeah. The one thing it's so funny, you mentioned top shots, just because I think top shots raises a question, which I haven't yet kind of figured out. It's like you, you have top shots.

We sort of did this deal with the NBA, which the NBA didn't completely embrace if you read a lot of publicity, because I think, uh, Top shots. They were pushing the envelope in terms of like, I heard the marketing guy of top shot say, this is a chance to get in on the ground floor. I'm like, Ooh, that's, that's not good securities analysis perspective.

That's like the one thing you don't want to say, but, I was just like thinking, this may be why the MBA's backing off, but so you have the MBA, they do this deal with top shots. I don't know, like they create these moments, but I don't know, like if top shots. Owns the moments. They're just moments.

They're like baseball cards. Like you have tops, you have a bunch of other people doing baseball cards, which one's worth more tops have been around for a longer period of time. The new B's maybe worth less because nobody knows about them, but then they do something cool. And maybe they're worth a little bit more, but so you have.

The NBA top shots, then you have like, I mean, I have a client, but you have different, like you have a music festival for artists, and you have a labor record label for artists, and you have artists and then you have players within the NBA. You have teams within the NBA, you have the NBA, maybe you have broadcasting and they all could be doing like NFTs.

And maybe they're all doing the exact same moments. Like the player in the NFL. He's not going to be like, yeah, I didn't sign up. My moment. That's still my moment I can do with it, what I want. And he's like, no, no, no, no, no. That's our moment. Cause we, you worked for us. NBA was like, no, no, no, no, that's fine.

And then like talk faster and be like, no, that's we publish it first. But you know, so I don't think anybody really cares, right. Because I think all these things will be released. And if I'm the player who's in the moment and I release the NFT. I don't know. Is that worth more than top shots? I guess it depends on a lot of different factors and the players got to like position himself to say, no, no, no, no, no.

I'm the real OJI. And then Tasha, I was getting like, you're going to know we're the real OJ, and which ones the real OJI, you're just a fake, I got the real deal, it's like, 30 of the same moment that everybody's like, no, no, no, no. I was the guy sitting at the stand and the sweat dripped on me and that makes me the O G because I have sweat.

I even like got it. Notarized C um, so, so yeah, I mean, I think it's just going to be a competition for, who's the real OJI or like, but he didn't get that today with like even live

music. Like, you, you have a track and it's played like 30 different times in different concerts. Well, which one's the real one.

Now it all goes back to Pearl jam or whoever did the live thing or. And I mean, there's like a bazillion big bands, but I just like a project because they do a lot of live stuff and I mean, which ones are going to be, but the original one is, but I think that

**Nelson:** brings us back full circle in a sense of everything related to art is very subjective, more so than, and, and I think that's an important distinction, more so than kind of the money side of crypto.

Right. That, that has a certain, I don't know more in my opinion, more objectivity attached to it then. This, it's kind of like, because you're right. We're going to have a situation too. And I wouldn't be surprised if this happens within the next. I don't know, years or so where you're going to have some, Heisman candidate and CWA player, who's going to sell, a series of NMT moments of themselves on some platform.

And one of the power schools that they play for is going to be like, whoa, wait a minute. Because recently, the Supreme court ruled that NCAA players can start. Profiting off themselves and their work as student athletes to a certain degree, but there's, what is that going to look like?

It'll probably start as just, and this is a tangent too, but it'll probably start as, ads on their Instagram page, right. For some sport drink or whatever. But it will start getting a little weird once they kind of, if they ever incorporate video audio that, associated with the school they're at, if I was those schools lawyers, I would be trying to kind of forecast, okay, where are we comfortable with them having rights, and giving them a license to do these sorts of things.

Cause they haven't had to consider all of this. Right. And another interesting thing, like you said about NBA top shot. It was my understanding. I thought that. With respect to the IP associated with the moments the NBA takes a position that they own, all of that they gave up nothing and they had no intention to.

But the odd thing about the NBA is that it's more akin to kind of a federal system than it is kind of a dictatorship in that each individual team has a certain number of rights and ability to do things. And so, we've actually seen this now where the Miami heat just put out some sort of NFT launch. I don't know if it's actually launched yet.

But they're selling, I believe historical moments in the heat's history. Well, it would seem like there would be at odds with, the NBA's position and to your point. Okay. Well, what if I own a Miami heat NBA top shot moment. And then. Yeah, I, you own the Miami heat version of it, which one is the O E or the O G.

These are questions that haven't had. Nobody has had to really answer yet, and again, that's a to VCU lawyerly, but until somebody sues someone else, we're not going to get some sort of, uh, at least bright lines. Well, we know in this jurisdiction, this is the position the courts

have taken, right until then it's just kind of, it's intellectually fascinating to try and work through.

Okay, well, what, what the hell do people actually own? What are their responsibilities? And, and where's this going to go? Where are the risks?

**Eric:** I mean, I'm going to use that as a segue to another point, which is, what we talked about initially at the beginning, which is moving from the image that has value in and of itself.

To something that is simply a certificate of authenticity, something that is more representative of some other rate that doesn't lie within the image itself. So, for example, a notarized document, like maybe in the context of a song, and again, this is not in the context of a song, there's a contract and so notarize contract.

And when I. When I purchased it, when I make that election, I get that notarized contract. Maybe I get the registration at the PTO, whatever. Why would an NFT be better than a notarized deed?

**Nelson:** Well, presented probably the NST would be a lot more liquid, right? The notarized deed is a physical object. You have to deliver it to someone.

Which means you have to convince somebody, they actually have the physical object to a certain level that they are willing to then purchase it for, from you and whatever it's associated with, and that those are high transaction costs with this. I mean, fundamentally crypto is kind of a, a transaction costs, lowering technology.

I know people, some critics may take issue with that, but that's the promise behind all of it. Right. And so. One thing that people have tried to do over the years is tried to create liquid intellectual property, asset markets, right? Make it easier for people to trade patents, trademarks, copyrights, because there's a lot of, uh, official documents that have to be signed and make sure that, the transfer is actually being, uh, done correctly.

There's also the issue of. Matching people together with these things. And so, there are a couple of attempts to try and make that process easier, uh, via NFTs because the information is out there on a blockchain, and anybody can view it and verify it basically instantly. And so that's a lot easier for them to.

Perhaps with respect to that example, I just gave IP assets and how they're valued is a complete black box. And really only kind of makes sense in the context of litigation, which is why the previous attempts I think, have failed to create a market for these IP assets. Right. But with respect to deeds, I mean, I believe there's actually a couple of different NFT.

Related like fractionalized real estate plays that people are exploring at the moment that of course raises all for a whole set of other, legal issues beyond this. And you may have talked about that with some of the other people on the show, but I think the promise of, of increased liquidity and lower transaction costs are kind of the main drivers behind that.

It just seems to be a bit easier to create a marketplace for this, given that a lot of the verification and the underlying information is. Faster.

**Eric:** Right. But, and I guess it's also depends on the asset class and, I, I know, like for example, in the residential market, some people say, look, oh, NFTs would be so superior.

Right. But then you think about it if my house turns over every 20 years. Right. And I do the transaction once as a seller, Maybe I don't really even care, right? Like I have to, or a buyer. I know I have to still file it with the county clerk's office and having worked in the government, you kind of know who you're going to be looking at.

And the other side, when you're trying to explain it to them and the person is just like, saying, uh, hold it, I'm having a problem with getting into DAS right now, and you're like, what? Cause we got this like NFT stuff, and you'd be like, I Sonny, I just, can you give me the document?

I'm going to triplicate. I'm going to do it on the carbon paper. That we have, to, to make sure and file it, in, in the, in the, in the back office where it's a fire hazard, but that's the way we've been doing it since the beginning of time. And I really don't feel like changing it cause nobody's paying me enough to think about NFTs.

Right, right. And so, in that market, it's hard to see it making sense from like a buyer or a seller. Or even necessarily a real estate agent, Hey, you can buy this through an NFT BB. Like some people be like, cool, but what does that mean? Like, uh, it's just a small lot fee because I got to make money cause I'm doing it well, I don't really know.

That makes sense to me. So, it was like you start to break down, where does it make sense? It might make sense where, there's more of a broader international market or let's say I'm buying real estate on the other side of the world. I mean, I'm not going to be going to the county clerk's office.

And I guess it's just a servicing entity that would kind of use, I mean, how does an NFP differ from like, could you send me, could you do a PDF of the notarized deed and send it back to me and sent to me via FedEx? Because I want to touch something like, does an NFT really help there? It really only helps us when you think something's going to take more than one time.

Right. Right. And you've got something, but if you're thinking like, like we were talking earlier about the sort of that legacy purchase, the legacy purchase makes sense. If, if the very thing I'm buying is a digital artifact. Right. And it's something I want to retain, but if it's a digital representation of something else,

**Nelson:** Well in certain asset classes you need, the transactions need to be reversible.

And we don't have that here in this, in most, every single instance, basically. And so, there was a project here in cook county, which Chicago is in, um, in cook county. One of the, if it's not the largest, it's one of the largest land deed recording offices in the country. And they

were exploring the use of, I think it was actually the colored coin scheme, that use Bitcoin is kind of the underlying platform and they put out a big report.

I want to say 2016. The approach that they did to try and transition the land records here in Cook County to some sort of blockchain based system. And that was the biggest thing. There was like, you, we need to be able to reverse transactions and it's just going to be too much of a pain to, if we.

You used a system like this, because as I say, like, grandma can't lose her house because she lost her private key, like, so there are certain asset classes where if you don't have some sort of reversibility, legally speaking, I don't know how it could ever really work. That's not to say.

Willing buyers and willing sellers that are willing to take on certain risks, can't engage in transactions for certain assets. It's just kind of, as you said, when you have to deal with the government and meet space, well, you may not get the answer you want. If it doesn't, follow the.

The Byzantine rule system that they've had in place, which by the way, has allowed them to maintain a ledger for hundreds of years, and in a sense, those deeds are kind of NFTs themselves. They just don't live, in travel at the speed of light, like, the things on open sea and railroads.

**Eric:** Right. I mean, I guess you have the risk of fire or something, some physical event, but it's interesting because trying to do it on a public blockchain probably doesn't make a lot of sense if you do want to incorporate that notion of reversibility, but I mean, fundamentally. Distributed ledger or like even a private blockchain, you can impose your own rules.

Of course, it's not immutable. So then maybe it doesn't fit the, the true definition of, what, when people think in terms of immutability on a blockchain, but what you're really looking for is if you want reversibility. Don't think in terms of immutable, think in terms of something like distributed ledger and you could have the digital representation.

I mean, on some level, the technology described differently. You can accomplish a lot of the same goals using terms that aren't as crypto native. Right? Right. Hey, scan in the deed or. Type in electronic record of the deed and put it on a distributed ledger that is, that you have validated by, your supervisor and everything else.

And that's what makes it authentic. And if there's a court order, that's a rule where the validator would then do it pursuant to the court order and noted in the ledger accordingly that I've reversed as pursuant to court order. And it's in there. This distributed ledger that is viewed as the Oracle, uh, for forever, until it turns out that they didn't get enough budget to transfer over to the new technology and we can't figure out what they did.

So, I think that all these backups, and maybe they're still printing out tons of paper anyway, and they're like, yeah, I'm so glad we went digital. It's just like, the things are coming off the Xerox machine and they're putting into files.

**Nelson:** Yeah. I like that. That's a different way of framing the technology, permission, distributed ledger.

Could provide a lot of efficiency gains in certain areas and respect, and actually that was part of what drew me to the crypto space in general was my background in voting because voting is a double spend problem, right? You only want people to be registered in one place and you only want them to be able to vote one.

Right. So, I do think there's potential, but you know, budgetary concerns and everything else come into play as well as technical talent. And are they really going to hire IBM to do this for them and spend the whatever tens of million dollars to spin up the system? Maybe some states, but you know, anyways, that's a bit of a tangent to the NFTs, but yeah,

**Eric:** actually not, it's actually not because it goes really, it goes directly to like, what is at the core of an NFC?

Like if you're a company selling to a municipality, you're probably an idiot. If you go into the most jurisdictions and say, Hey, why don't we take all your records and make them into NFTs? And then somebody. It wasn't that crazy thing. They did it on Saturday night live, or you could say, listen, you've got all this stuff in paper, digitize it.

Cause it's crumbling, it's old. You can't find it. It's inefficient. Okay. We can do that. Okay. Now that you've done that, why don't we put it on a ledger system so that you can better track how it changes ownership? Oh yeah, you can do that. And now what state, and if you really, ultimately you say, Hey, this has to connect to a larger system where there's a market.

Oh, let's think about how it let's do an API so we can have an interface with it. I mean,

**Nelson:** no, that is interesting. I never really thought of, say you had some sort of system that guarantees the land records amongst all the clerk's offices and cook county, right. Or whatever official. And they all maintain their own copy of the ledger, but you.

For certain types of properties allow other people to basically Jack in. Right. And they can effectuate sales on different platforms and the government just has to sign off on it. I mean, that's like a validator.

**Eric:** Yeah. Right. Because

**Nelson:** then you can be comfortable. Trying to sell to the government, working with the government, in this space is a well, let's just say historically, it's not an area they're interested

**Eric:** in.

There's a marketplace where us more crypto native. I don't know if I even call myself crypto native yet. It's a continuum, but there's those who are more tech savvy. And we'd like to think, it is revolutionary technology. It is going to change the world. Over time, but the rest of the world, a lot of them are operating under the old systems and they're still catching up with technology from like 10 years ago.

And you'd be shocked, and I'm know I'm going on a tangent, but you'd be shocked at like municipalities, how like backwards they are on like cybersecurity. I tried selling cybersecurity to municipalities and they're running like into life servers. There's nothing I can do here. Like you're running end of life servers.

Like I don't even know where to begin to secure you. So that's what you're sort of dealing with, well, we have a crimp budget, we'll look for it next year and, et cetera, et cetera. So, but you know, municipalities counties, Title deeds car, UCC filings, all that stuff again, I think where there's a D where there's liquidity, the money will, see that, see that as an opportunity because there's with each transaction, there's the ability to capture something.

And maybe that's a music rates, music rights might sort of lead the charge on that because certainly the music industry has been abused by copyright, uh, today, it's Spotify and everything else. Did they have to kind of figure things out and NFTs could enable them to do so.

**Nelson:** Yeah. It's kind of a, to your point, I think what you just highlighted kind of gets to my sense of the future in that I've always, I mean, I like star Trek and I watched the movies.

I never really watched TV shows. Right. But it was always. Just to idealize sense of the future. And I always thought star wars where you have like crazy, planet destroying technology, but there's also still just like literal junkyards and like people using sticks, I'm like, yep, that's the future we're headed.

Right. We'll have, certain markets and certain things that are completely mind blowing to us, but there's still, we're always going to have clerks with carbon copy paper who are going to be recording something. So.

**Eric:** Great. So, this was a great discussion Nelson. Thanks for coming on the show.

If people want to find out more about you, your law firm, where can they find you? I

**Nelson:** am unfortunately very active on Twitter. You can follow me there and reach out to me there at Nelson M Rosario or, feel free to drop me an email Nelson at small Roz law. That's S M O R O S. Uh, law.com.

**Eric:** Excellent.

Well, thanks so much. It was great to have you on the show.

**Nelson:** Yeah. Thanks Eric. This was a blast. Appreciate it.

Yeah.