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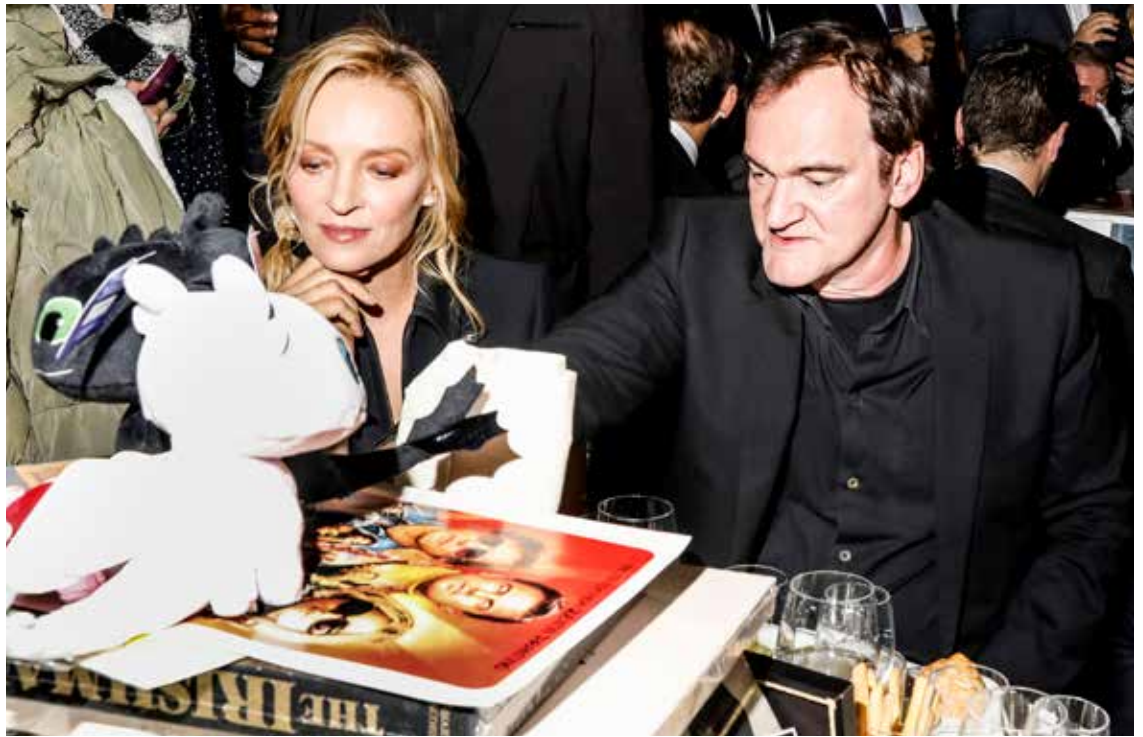
## How an NFT is like a \$5 milkshake

By Michael Dore

Hollywood got its first big case about non-fungible tokens — aka “NFTs” — last month when Miramax filed a federal lawsuit in Los Angeles against Quentin Tarantino. At issue is the famed director’s plan to sell portions of his original hand-written “Pulp Fiction” screenplay as NFTs. Miramax alleges that it owns and controls the right to sell NFTs of any version of the film’s screenplay. Tarantino asserts that his 1993 contract with the studio expressly reserved Tarantino’s rights to any screenplay “publication,” which he says includes an NFT. As is often the case in entertainment litigation, the contract language will decide the outcome. But interpreting that language presents a fundamental issue about what NFTs are.

Some may think that a digital artwork itself is the NFT. The reality can be more complicated. The NFT is a digital identifier that records ownership of certain rights related to a digital file, but often it does not include the actual image. The token amounts to your “receipt” and is stored on the blockchain, which is an electronic ledger that permanently records a history of transactions. But the image file often resides elsewhere — sometimes at just a regular web address — because it would be too expensive to maintain the large image file on the blockchain as it is bought and sold. Wherever the image is stored, it is not necessarily unique. Copies of it may be all over the internet, and the image associated with an NFT is indistinguishable from copies.

This raises an interesting question about what is “new” about



New York Times News Service

Quentin Tarantino, right, and Uma Thurman, a star of “Pulp Fiction,” in New York, Jan. 8, 2020.

NFTs. Digital files on the internet have been around a long time, even in 1993. But there really was not a viable way to commoditize them until they were tied to the blockchain. That permanent record enables someone to verify that a particular file is genuine and unique, which increases its perceived value. “Digital scarcity” is why buyers are willing to pay sometimes enormous sums for NFTs of images that everyone else can simply “right-click” and save to their desktop. The image may be the same, but the blockchain technology makes the token “non-fungible.” It effectively is an authorized copy, similar to an artist’s print — which brings us back to the “Pulp Fiction” contract.

Under the agreement, Tarantino granted to Miramax “all rights” to the film “now or hereafter known,”

with the exception of certain specified “Reserved Rights.” Those Reserved Rights included, among other things, “print publication (including without limitation screenplay publication, ‘making of’ books, comic books and novelization, in audio and electronic formats as well, as applicable).” The key question in the case is whether the “publication” rights described in that clause apply to NFTs of Tarantino’s hand-written “Pulp Fiction” script excerpts.

Miramax’s complaint asserts that, “the proposed sale of a few original script pages or scenes as an NFT is a one-time transaction, which does not constitute publication, and in any event does not fall within the intended meaning of ‘print publication’ or ‘screenplay publication.’” In support of this position, the studio cites the con-

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tract's forward-looking language that applies only to Miramax, asserting that Tarantino's Reserved Rights are a "narrowly-drafted, static exception to Miramax's broad, catch-all rights." It adds, "Tarantino's Reserved Rights do not encompass any rights or media that were not known at the time of the Original Rights Agreement."

Calling Miramax's lawsuit "offensively meritless," Tarantino responds in his answer that "Tarantino has every right to publish portions of his original handwritten screenplay for *Pulp Fiction*," and that the studio is trying to "use the concept of NFTs to confuse the public and mislead this Court in an effort to deny artists such as Tarantino their hard earned and long standing rights."

So is selling an NFT of a portion of Tarantino's handwritten script

a new use that was unknown in 1993? Or is it merely a screenplay publication, perhaps in an "electronic format," that Tarantino has been entitled to sell for almost thirty years? Again, the answer will depend in large part on how someone views NFTs. To be sure, the drumbeat of announcements of NFT releases and record sales is a very recent phenomenon. Certainly no one had any conception of NFTs decades ago, just like the contracts between studios and talent throughout much of the twentieth century said nothing about DVD revenue. NFTs rely on blockchain technology and "smart contracts" (essentially, computer programs) that launched relatively recently. They easily could be perceived as a "new" type of exploitation, in which case Miramax's rights to the film "now or hereafter

known" arguably would control.

At the same time, Tarantino might contend that an NFT is merely a new way to render an established format more valuable. For the "right-click" crowd that considers NFTs to be a monetization of image files that internet users always have been able to copy and display for free, NFTs only create scarcity and a way to profit from a jpeg for which no one would have paid a cent before. Tarantino may argue that selling an NFT of his script is no different from selling a photograph of it, and U.S. Copyright Office guidance interprets "publication" to apply to the sale of even one original copy.

Whichever side's interpretation of the contract language prevails in the "Pulp Fiction" lawsuit, litigation over the right to sell and profit from NFTs is sure to continue.

The rapidly evolving changes in technology and varied contract terms from case to case may make it difficult to establish any consistently applicable approach to NFT-related revenue. But one key battleground is likely to be whether NFTs themselves are a new form of content exploitation or rather an established distribution method that people only now are willing to pay for. It is an imperfect analogy, but they are a bit like the milkshake in one of the film's iconic scenes. Jack Rabbit Slim's could charge more for the shake because you don't have Buddy Holly bring you dinner before a big restaurant dance competition anywhere else. But to Vincent Vega, it is just milk and ice cream.

*Zachary Montgomery contributed to this article.*