



CUMMINGS  
PEPPERDINE

# CUMMINGS PEPPERDINE - A QUICK GUIDE TO NFTS IN THE UK

## WHAT IS AN NFT?

Well, it can be hard to get your head round at first. It is one token linked to another, a parent asset to an underlying asset (usually digital but also sometimes physical), which is intended to show proof of ownership. Crucially, each one is cryptographically unique and is completely non-transferable.

## KEY TERMS

**NFT** – this is explained broadly above. To add some more detail, NFT stands for non-fungible tokens. NFTs are created on blockchain and then created (or ‘minted’) (see definition below) by the owner of the underlying asset, either directly or by a third party to the instruction of the owner. They are also immutable which is prized as it means that they provide an unchanging proof of title to a unique underlying asset.

**Minting** – the definition of an NFT leads us to look at what minting is. In brief, it is the process of generating the NFT. Once the NFT has been created, (i.e. minted) it is now linked to the underlying asset and recorded on blockchain. Parties who mint NFTs need to consider whether their actions as a whole bring them into the scope of money laundering rules and the requirement to be registered with the Financial Conduct Authority (FCA).

**Blockchain** – this is also known in common parlance as distributed ledger technology, or DLT (though developers do draw a distinction as blockchain is a type and user of DLT). It is a comprehensive, always up-to-date ledger which

CUMMINGS PEPPERDINE

+44 7734 057 327

Green Park House, 15 Stratton Street,  
London W1J 8LQ

[www.cummingspepperdine.com](http://www.cummingspepperdine.com)

is created by combining cryptography and database distribution. Once created, it cannot be changed, it is, therefore, immutable.

**Marketplace** – NFTs do not have to be bought and sold, they can just be held by the owner with no plans for any type of exchange. However, if they are to be used in transactions, this takes place on a digital platform and this is the marketplace. Some marketplaces are open to anyone who has minted an NFT on a specific blockchain, while others are curated, and decide which NFTs will be listed. Additionally, some marketplaces are open and allow the NFTs which they listed to be transferred out of the marketplace, while some are closed and only allow the NFT to be bought and sold within that marketplace.

**Smart contracts** – we cannot look at Blockchains or Marketplaces without considering the smart contracts which allow actions to be taken. Smart contracts are contracts like any other, but the difference is that they are formed by self-executing code which sets out predefined terms which are then executed on a blockchain. Being self-executing means that their code is automatically executed in accordance with predetermined rules without the intervention of any third party.

## KEY CHARACTERISTICS

We have reduced these down to those which we believe are the three key characteristics that distinguish NFTs.

First, they are absolutely unique. In other words they are non-fungible, and this means that there is nothing identical to them. This in turn means that they cannot be replaceable by or interchanged with an identical item. This contrasts them with cryptocurrencies, which are fungible and interchangeable. One bitcoin can be exchanged for another very simply. That cannot happen with an NFT as each is unique.

Secondly, they make use of smart contracts from generation onwards. Smart contracts are used to generate NFTs and then to automate the performance of various contractual

obligations between the relevant parties. To give an example, a smart contract can ensure that when an NFT is sold, a percentage of the sale proceeds is automatically sent to a third party. With NFTs based on art, this is usually the original creator of the underlying asset. And so the artist is automatically paid without any delay, haggling or argument. It just happens, because the smart contract has been written to make sure it does.

Thirdly, there is always an underlying asset. It may be an artwork which is held physically or it may be a form of title to which the NFT shows immutable and unarguable proof of title. And the underlying asset is separate to its NFT. The owner of an NFT owns only that, the NFT. It does not also own the underlying asset, and other NFTs of that underlying asset can be minted, thus copying the NFT. Whether this is legal depends on the circumstances and enforcement can be a litigious issue.

## UK REGULATIONS

At the moment, English law does not provide us with a standardised regulatory framework or treatment of NFTs. Current regulatory guidance suggests that most NFTs will be unregulated as they do not generally fit into the definition of an FCA regulated type of investment. This needs to be considered on a case-by-case basis. The nature and nuances of each NFT need to be analysed to see if they have any characteristics that are substantially similar to those of security tokens, transferable securities or e-money tokens, as this may bring them into the remit of UK regulation.

## HELP!

If NFTs are an area of interest to you or you'd like to know more about them, in particular whether they or the activities around NFTs fall under the FCA's rules, please do get in touch.

In a new and swiftly developing area it is always worth taking the time to make sure you stay the right side of the law.

## THE TEAM

Cummings Pepperdine is a leading advisor in crypto. We are one of a select few that advises a large and diverse global client base in the crypto space and the only to provide a complete crypto solution building on the three key areas of law, tax and FCA with legal underpinning at every point.

In law, we have a team of qualified and regulated solicitors and barrister who retains right of audience.

In tax, we have one of the only crypto tax advisors who is both a qualified solicitor and qualified chartered accountant.

In regulation, our team comprises specialists in crypto compliance monitoring structures and governance oversight who are known to the FCA for the quality of their work.

The team is led by Claire Cummings, a leading solicitor specialising in crypto law and the current and evolving regulation. Claire is on the advisory boards of a crypto exchange and an NFT gaming guild and is also a member of the Global Digital Finance working group on



**Claire Cummings**

stablecoins. Claire has also acted as compliance officer, MLRO and director of an FCA regulated fund manager and qualified under SIB to trade derivatives. As a leading expert in crypto, Claire is a sought after speaker and has published multiple articles on the legal and regulatory issues surrounding cryptocurrencies and the crypto eco-system. Claire is named at the Top 10 influencer in London for hedge funds (2&20, 2022) and is included in the CityWealth Crypto Top 100

---

The Cummings Pepperdine Online Training Programme, includes sections focussing on NFTs in the UK, has been designed by a specialist board of compliance consultants, solicitors, chartered accountants, tax advisors and regulatory consultants. We believe that we are the only firm which offers training created by this range of qualified advisors.

[Click here now to make it all work](#)

[Watch our introductory video](#)

[claire.cummings@cummingspepperdine.com](mailto:claire.cummings@cummingspepperdine.com)  
[michael.borrelli@cummingspepperdine.com](mailto:michael.borrelli@cummingspepperdine.com)  
[serena.joseph@cummingspepperdine.com](mailto:serena.joseph@cummingspepperdine.com)  
[nathalie.hankey@cummingspepperdine.com](mailto:nathalie.hankey@cummingspepperdine.com)

[samantha.fitter@cummingspepperdine.com](mailto:samantha.fitter@cummingspepperdine.com)  
[nigel.tobin@cummingspepperdine.com](mailto:nigel.tobin@cummingspepperdine.com)  
[pa@cummingspepperdine.com](mailto:pa@cummingspepperdine.com)  
[ryan.ottman@cummingspepperdine.com](mailto:ryan.ottman@cummingspepperdine.com)

### Cummings Pepperdine LLP - October 2022

We have taken great care to ensure the accuracy of this document. However, it is written in general terms, is for general guidance and does not constitute advice in any form. You are strongly recommended to seek specific advice before taking any action based on the information it contains. No responsibility can be taken for any loss arising from, action taken or refrained from on the basis of this publication. Nothing within this document may be copied, re-printed or similar without prior written permission from Cummings Pepperdine LLP.



CUMMINGS  
PEPPERDINE

CUMMINGS PEPPERDINE

+44 7734 057 327

Green Park House, 15 Stratton Street  
London W1J 8LQ

[www.cummingspepperdine.com](http://www.cummingspepperdine.com)