

A Study of the Creating a Trust of Information using an NFT

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Under the Japanese Trust Act, it is not clear that information, which means a data unless otherwise stated, is included in the scope of a trust property.

In case of a trust in which the trust property is information, whether the information fall under trust property is a crucial issue due to exclusivity of the information for its intangibility which arises from features such as simultaneous use of the information by multiple persons and ease of reproduction. This study shows the consideration of ensuring the predictability of exclusivity by linking the transfer of an NFT, Non-Fungible token, and information holders that has control of the Information.

First, with regard to the legal relationship between information linked an NFT (referred to as the “NFT Information”) and an NFT linked the NFT Information (referred to as the “Information NFT”), the Information NFT and the NFT Information are different objects, and the transfer of the Information NFT to a trustee does not necessarily transfer the rights pertaining to the NFT Information.

The specific method of utilizing an NFT in the trust of information can be classified into two cases, i.e., (i) the case where an NFT is utilized as a means to enable exclusivity of information and (ii) the case where creating trust that only the Information NFT is transferred as the trust property. The distinction of these cases is based on whether the Information NFT itself has value.

Related to Case (i), there are two views to consider to be trust property, in case only the NFT Information is consider to the trust property, and in case not only the NFT Information but also the Information NFT is considered to be the trust property. In conclusion, both the NFT Information and the Information NFT should be included in trust property to clarify the entity that has control of the NFT Information through the holding of the Information NFT.

With regard to Case (ii), a trust creating the Information NFT as trust property could be considered analogously to a trust creating cryptoasset because both has in common that the token itself has economic value. The requirements of trust property in Japanese Trust Act consist of (i) it is a positive property which can be estimated in monetary and (ii) it can be separated from a settlor's property. The Information NFT is a positive property and it can be estimated in monetary through NFT market place, etc., and it can separate from property of a settlor because transfer of an NFT is clearly recorded in block chain same as cryptoasset. Thus, the Information NFT can be included in a trust property in this case.

In terms of laws and regulations in Japan, Act on Engagement in Trust Business by Financial Institutions, etc. prohibits from acceptance of trust whose trust property includes cryptoasset other than the custodial trust business related to cryptoasset, however, it may be considered that trust banks may engage in custodial trust business related to an NFT, at least, because the regulations does not govern it as a prohibited business. In addition, Act on Prevention of Transfer of Criminal Proceeds does not impose verification at the time of transaction on business operator engaging an NFT sales at this time.

Finally, this study refers to some practical issues such as obligation of separate management of the NFT Information and the Information NFT in trust property, and possibility of creating a trust

of Information using an NFT as charitable trust, and points out needs of consideration that digital data including digital assets can be subject of proprietary rights.