

**SABA**  
INTELLECTUAL  
PROPERTY

**BULLETIN**

May 2022



**MENA**

Spill the NFT:  
Digital Assets and  
Intellectual Property Rights

What You Need to Know  
About Protecting Your Marks  
in a Growing Region

## MENA | SPILL THE NFT: DIGITAL ASSETS AND INTELLECTUAL PROPERTY RIGHTS

Seemingly, out of nowhere, interest in digital assets like non-fungible tokens (NFTs) has surged in recent years and sales have exceeded a whopping USD 2.5 billion in the first quarter of 2021. With nearly twice as many buyers as sellers, sports memorabilia companies, musicians, artists, and even airlines have harnessed NFTs to monetize their works and exploit their intellectual property rights.

### WHAT ARE NFTS AND WHERE DO THEY COME FROM?

A non-fungible token, or an NFT for short, is a digital asset that has its authenticity certified on a blockchain ledger. Even though digital copies of these items are available for anyone to download, NFTs are tracked on blockchains. The NFT ledger provides the owner of the NFT with a proof of ownership that is separate from copyright. To put it in terms of physical art collecting: anyone can buy a copy of the Portrait of Paul Eluard, but only one person can own the original.

Despite the fact that NFTs may function like crypto tokens, NFTs are not mutually interchangeable. This means that unlike cryptocurrencies, such as Bitcoin or Dogecoin, NFTs are not fungible because they are distinctive and cannot be exchanged for other NFTs. Moreover, each NFT is a unique digital asset that can be extremely valuable and highly sought-after by potential collectors.

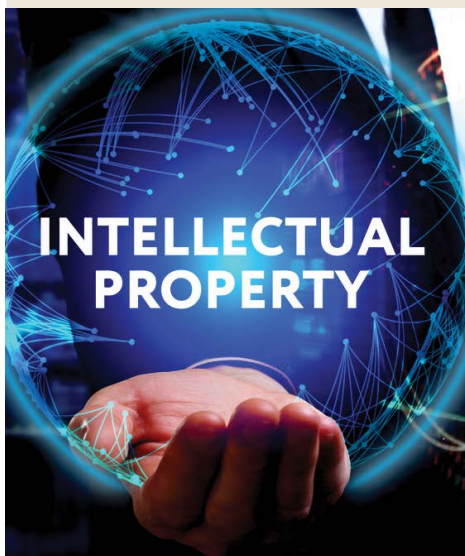
An NFT can be created on one of any number of blockchains, with Ethereum being the most popular. By way of background, Ethereum was the first blockchain to support NFTs with its ERC-721 standard, which describes how to build non-fungible or unique tokens on the Ethereum blockchain. Other blockchains have added or plan to add support for NFTs with their growing popularity.

Once a blockchain and platform are selected, NFTs can be minted on that blockchain. Depending on the platform, creating an NFT can include uploading an image, video, or music file, and adding a name and description.



# NFT

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### INTELLECTUAL PROPERTY

#### WHAT ABOUT IP?

With that in mind, and considering the non-fungible nature of NFTs, a new distribution model for the monetization of intellectual property rights arises. It is worth noting that ownership of an NFT is often associated with a license to use the underlying digital asset, but generally does not confer any associated intellectual property rights to the buyer.

Protecting NFTs and other digital assets in the Middle East and North Africa region requires proper due diligence and local familiarity with the relevant laws. While it is possible to protect NFTs in theory, the practice may vary from one jurisdiction to another. For instance, in the UAE, applicants may reflect a detailed description of the goods and services to be claimed for the protection of digital assets under classes 9, 35, 41, 42 and other relevant ones, while in some of the other countries in the region, class headings might be an alternative option.

The below table offers a brief overview of what you need to know before filing a trademark application to protect your digital assets in the MENA region.

COUNTRY	ARE DESCRIPTIONS OF VIRTUAL GOODS ALLOWED?	WILL TMO ACCEPT NFT/CRYPTO DESCRIPTIONS?	COMMENTS
Bahrain	Yes	Yes	Applications might face possible office actions
Jordan	Yes	Yes	Applications might face possible office actions
Kuwait	No	No	Detailed descriptions cannot be filed
Lebanon	Yes	Yes	
Oman	Yes	Yes	
Morocco	Yes	Yes	Applications might face possible office actions
Qatar	Yes	Yes	

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COUNTRY	ARE DESCRIPTIONS OF VIRTUAL GOODS ALLOWED?	WILL TMO ACCEPT NFT/CRYPTO DESCRIPTIONS?	COMMENTS
Saudi Arabia	No	No	Restrict filing to descriptions set by SAIP
Syria	No	No	Detailed descriptions cannot be filed
United Arab Emirates	Yes	Yes	
Yemen	Yes	Yes	

As NFTs continue going viral, they present both opportunities and potential risks for brand owners, who will undoubtedly be asking questions along the line of how to navigate this burgeoning and intangible world. As aforementioned in the discussion above, brand owners have the option to list NFTs in the scope of the goods/services in certain jurisdictions in order to mitigate any uncertainties and ensure that the protection afforded by registering a trademark is sufficient for their digital assets. With that said, the countries and jurisdictions in the MENA have yet to issue any jurisprudence on digital assets, which necessitates the need to form a proper strategy in order to enforce and protect intellectual property rights in the virtual realm.



## MENA | WHAT YOU NEED TO KNOW ABOUT PROTECTING YOUR MARKS IN A GROWING REGION

**Protecting and safeguarding marks in MENA requires certain considerations related to the nature of the Arabic language and the local laws that govern trademarks.**

The Middle East and North Africa (MENA), receives its share of news in the international circuit. At the forefront, the boom, which began in Saudi Arabia and the United Arab Emirates (UAE) a few years ago, is still going strong, along with the introduction and implementation of a number of reforms, which are steadily fueling the diversification of the economy and attracting both national and foreign investment. Egypt's economy also continues to grow and draw considerable attention from foreign investment given the constant development of a number of industries, including manufacturing, food processing, agriculture, hydrocarbons, and pharmaceuticals, and other service sectors that are driving the country's relatively diverse economic activity.

**Brand owners have become increasingly aware of the importance of extending their**

**trademark portfolios to the rapidly developing MENA market.** A combined, relatively young population of half a billion growing at double digit rates, plays a significant role in making the region one of the fastest growing markets in the world with five year compound annual growth rate outlooks of between 9 to 30 percent depending on the field or sector.

With that in mind, it is worth noting that the countries and jurisdictions in the **MENA region follow the first-to-file principle** for trademark registration, and thus, it is advisable for brand owners to seriously consider filing before unscrupulous individuals or entities exploit their brands' goodwill.

The standard definition of a trademark is somewhat common and the absolute grounds for registration in the countries and jurisdictions of the region are relatively the same with some minor differences. *Ex officio* examination on relative grounds is performed all over the region, with the exception of Lebanon and Tunisia.



## MENA | WHAT YOU NEED TO KNOW ABOUT PROTECTING YOUR MARKS IN A GROWING REGION



With the exception of Algeria and Lebanon, nearly all countries provide interested third parties with an opposition period prior to registration, which ranges between 30 days to several months from the publication date.



### Importance of Protecting Brands in the Arabic Language

Arabic is the official and main language in all the MENA countries. This brings certain considerations when it comes to the protection of trademarks where in some countries it is highly recommended to register trademarks in Arabic if required to be used on signboards. In most countries and jurisdictions in the MENA, marks may be registered in Latin script, either on their own or alongside their Arabic transliteration. Even though transliterations are protected by law in many of the MENA countries, yet, as a result of the immense lexicon of the Arabic language, **it is highly advisable for brand owners to register their brands in Arabic characters as to how they want the brand to be used and recognized. This gives them better protection against any alterations in the Arabic version of their mark which are similar to their own.**

### Non-Conventional Marks in the MENA

Despite the novelty and unfamiliar nature of non-conventional marks in the MENA, **Saba IP has successfully filed non-conventional marks in many countries, namely Saudi**

## MENA | WHAT YOU NEED TO KNOW ABOUT PROTECTING YOUR MARKS IN A GROWING REGION



**Arabia, Oman, and the UAE.** Recently, both the Saudi Authority for Intellectual Property (SAIP) and the Omani Trademark Office accepted their first sound trademark application, which was examined as to form only, and was subsequently registered. In the absence of fundamental principles of protectability of sound marks, including related definitive issues such as specific articulation or affixation/product connection requirements, gray areas in the legislation and the implementation have still to be clarified. In addition, there are no precedents on how prior cases regarding infringement of non-conventional trademarks have been decided. The existence of such precedents gives an indication of how the judicial interpretation of the laws would be in cases involving identical circumstances. Therefore, the question of enforceability of non-conventional trademarks is a matter solely determined by the articles on trademark infringement as referred to under the local law, depending on the country or jurisdiction. Many registrations of non-conventional marks were also witnessed in the UAE, where 3D Trademarks are being extremely helpful for clients to enforce their rights against lookalike infringing products.

### Conclusion

It is evident that setting an IP strategy for the protection of a brand, company, or product name in the MENA is highly recommended and needed, which takes into account the elements that differentiate and are unique to the region. Additionally, and in order to safeguard and enforce valuable marks, brand owners must continuously monitor trademark publications and react immediately against any potential infringement or potential damage to their existing rights.

With a number of Trademark Offices issuing office actions, and in most countries in the local language, Arabic, applicants tend to depend on the local representative to fully understand the technical and legal implications and provide a plan or strategy for preparing and filing the best response to address these reports in a methodical, adequate, and timely manner.



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In many instances, an interview with the registrar may be required. As the applicant's local representative, the latter should be able to understand the applicant's strategy and adequately argue with the registrar as needed to address any remarks or comments made during examination hearings, if available.

At Saba IP, we pride ourselves of thinking **GLOBAL**, as our teams are continuously ahead of the international IP regulations; yet, we act **LOCAL**, as we are very close to the various IP offices and are familiar with the latest national IP practices. Saba IP experts not only fully understand the legal aspects of your IP rights, but also their merits and validity.



**THE BIGGER YOU GROW,  
THE STRONGER WE GET**



**90<sup>+</sup>**  
YEARS

**50<sup>+</sup>**  
JURISDICTIONS

**1**  
FIRM

COUNSELING | PROSECUTION | ENFORCEMENT

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