



Fox Rothschild Podcast

Legally EmpowHERed Podcast

Episode Eight

Featuring Partner Sahara Pynes with Heidi Vaquerano

Sahara Pynes: Welcome back to Legally EmpowHERed, I'm your host Sahara Pynes, and I'm really excited to bring this podcast to you. As an attorney and former business owner myself, I'm passionate about drawing on my own experience and insight to set my female clients up for success. I know my guest today feels the same.

Today's guest has been blazing a trail in the entertainment industry for nearly two decades. Heidi Vaquerano is a partner in Fox's Los Angeles office who represents actors, Grammy-nominated musicians, production companies, independent record labels, tech startups and other clients in negotiating talent content and production agreements across multiple platforms and mediums. She has twice been named a top music lawyer by *Billboard* and serves on the South by Southwest Pitch Advisory Board and Board of Trustees for Southwestern Law School. Heidi is also a leader and advocate on diversity and inclusion issues, formerly serving as managing director of Girls in Tech L.A., and is currently a board member of Mayor Garcetti's WiSTEM initiative, whose goal is to empower women of all levels to lead Los Angeles STEM Revolution.

Welcome Heidi, I am so excited to finally have you on today to talk about a topic that may be as equally confusing as it is exciting: NFTs.

Heidi Vaquerano: Thank you for having me, Sahara. I'm excited to be here. I know everyone is interested in NFTs and making those million of dollars that they see in articles, so I'm happy to have this chat with you and kind of break it down so people understand what they're getting into and what's out there.

Sahara Pynes: Oh, yeah, this is going to be a how to make a million dollars using NFTs, right?

Heidi Vaquerano: Exactly right.

Sahara Pynes: So, I've got to admit, I was a little bit nervous to even have you on since this is a topic that I'm not totally comfortable with, and that's pretty much the understatement of the year. Why don't we start with, what is an NFT?

Heidy Vaquerano: An NFT stands for a non-fungible token, which is a digital asset that is tied to a digital ledger through blockchain technology. A lot of us have heard what blockchain is, but basically, it's a publicly accessible, transparent ledger that records the history of a digital asset such as an NFT.

Sahara Pynes: So, what type of intellectual property are typically going to be created into NFTs?

Heidy Vaquerano: Well, right now it's the wild wild west, we see everything from Jack Dorsey's first tweet that sold as an NFT, to comic book artwork that's turned into a token, or the more traditional stuff that I see in my field, which is where a musician decides to tokenize their album, decides to bundle it with an NFT ticket for a concert, or just general artwork that are collectibles that are created and minted into a token.

Sahara Pynes: OK, I am going to ask you a little hypothetical. So, if I wanted to, let's just say turn our podcast episode today into an NFT. What would that look like? How would we do that?

Heidy Vaquerano: Well, that's the that's best part of my job. I will take that asset that you're telling me, which is your podcast, right? Most of the time when you have your podcast episode and you have a guest appear you have to sign some form of appearance release. So my job as the attorney is to go through the IP issues involved before we get to the tokenizing of that asset. So, you, as the podcast owner, most likely have somebody sign a release that says that they are part that you can exploit that podcast episode in any manner in media.

Then you'll be able to go to a platform such as an Ethernity and Open Sea, Yellow Heart or some other new, burgeoning one—because there's always a new one every day—and tell them I'd like to tokenize my podcast and put it out there. So, they would ask you, "Hey, who owns the rights?" And you would let them know "I own 100% of the rights." So, in that smart contract, you would get X percentage for being the owner. The platform who helps you put it out there as an option owns a percentage anywhere from ten to fifteen percent. If you decided to put some graphic artwork or design, if you ended up paying that person a flat fee, then you most likely own 100 percent of it. Or you decide that I'm going to cut them into the sale of that and give them five percent because they created this really great artwork. So that's then put into the smart contract, which is created by the computer code that's attached to each NFT, and that is what governs the token itself. So, in the future when it's sold, it shows exactly how the proceeds are split.

Sahara Pynes: OK. And so, the smart contract you mentioned gets sort of auto generated by whatever computer program you use. So, you don't really need to know anything about that, or do you need an attorney to look at that? How does that work?

Heidy Vaquerano: Yes, you're definitely going to want to have a form of approval. So, when you're going to do the deal with the platform, they'll send you their standard terms and conditions. And what you'll want to do is have your client have approval over the smart contract before it is created and minted into the NFT. Once you create the smart contract and it's on the blockchain, it's nearly impossible to edit it, revise it or change it. So that's why it's so important for you and your client to review that smart contract and make sure that the parties are listed correctly — their percentages, along with any other digital data like their MetaMask wallet, or however they'll be receiving the proceeds from the sale.

Sahara Pynes: OK, so how does anybody know that my NFT is up there on the blockchain?

Heidy Vaquerano: Well, that's the interesting part and why I love my job, because it allows me to combine my creative side and the business savvy that I've learned after being in this industry. So, my job when a client comes to me and tells me, "Hey, I have this really great meme that ten years ago was going wild on YouTube." So, I tell them, "Okay, great, who's come to you?" I review the agreements. I look into the platforms and see what niche market their audience is a part of. With the NFT, the reason why it is such a hot asset is because of the scarcity. Sometimes you're only going to get a one of one. Like I mentioned before, Jack Dorsey's tweet sold for over \$2.9 million because it was one of one. That person gets to have the cachet and say, I own his first tweet. But that's what I love about our job is that every day there's something new out there. There are new income streams that are developing and that you can take advantage of, and that allows you and your artist team to be creative about how to continue to develop an artist.

Sahara Pynes: So, who are buying the NFTs?

Heidy Vaquerano: A lot of Gen Zers and crypto whales, which I think to me.

Sahara Pynes: I don't know what a crypto whale is. Is that like Moby Dick, he's a crypto whale now?

Heidy Vaquerano: It's just a term of art for people who have a ton of money, either in Bitcoin or Ethereum, they basically are millionaires, but in digital currency and cryptocurrencies.

Sahara Pynes: OK, so they're buying these NFTs. And how does a non-crypto whale, like you or I, go ahead and buy an NFT?

Heidy Vaquerano: A normal person? Well, it's funny because I ended up doing this myself because I'm such a believer in I can do the agreement, and unless you actually partake in a sale, how are you going to know how this actually works? And the better you go through, the better you know the process, the better you can serve your client. So, I ended up doing buying a

Snoop Dogecoin. I had already had a Coinbase wallet, or you can go in and decide to use the platform, and some platforms allow you to buy it with traditional U.S. dollars, which they call fiat, or you can buy it in cryptocurrency. So if you're someone new to this area, you may want to look for a platform that allows you to purchase it with a credit card or using U.S. dollars, or if you're more advanced, which a lot of today's kids are. You can buy it with cryptocurrency, and it depends. A lot of it could be where you're buying. There's an auction, there's 100 available, and you can put in how much you're willing to pay for it. Like, I put in \$100 to see if I could get a Dogecoin. As another example in the music world, we saw that The Weeknd created an exclusive song that he sold as part of his NFT collection. So, one of one and that exclusive song sold for \$490,000.

Sahara Pynes: Wow. So that's great for musicians or artists who have name recognition. But how would a regular entrepreneur utilize this new marketplace as a revenue source?

Heidy Vaquerano: There's a variety of different ways. We represent some graphic designers who are a hot commodity, especially in this space, because something that makes these collectibles so rare and so wanted is the design and artwork themselves. So, the graphic designer can get into the NFT space. Working with an author, particularly some in the comic book space are doing really well, where they are using the comic book art and converting that into NFT tokens and creating a whole metaverse, which is a universe, a digital universe that they can exploit and use the NFTs and collect them, which again is part of the rarity of it. And it's creating a niche community that has the hunger for that rare collectible.

Sahara Pynes: And which sort of marketplace you sell it on might depend on the niche of the platform. Did I get that right?

Heidy Vaquerano: Yes, you're definitely going to want to do some legwork before you decide which platform you want to go to, because the important part is that you want that platform to market to the correct audience that's going to help drive up the price. So, you don't want to use one that hasn't done memes before, because that may not be what that audience is looking for. So, I, as an attorney, when clients come to me, do some legwork and research, just see where has this, what has been sold on? What's been the most popular? What is the audience looking for?

Sahara Pynes: That is the first thing I actually understand, but maybe that's because it goes back to traditional marketing.

Heidy Vaquerano: Yes.

Sahara Pynes: OK, let's talk more about the legal side. How does that work with the IP and approval? So, if you're hiring a graphic designer to help you? Is it just a contract with that individual designer that you have the right to use, or is there more involved?

Heidy Vaquerano: This is actually one of my favorite parts of my job because we go back to our basics, we analyze what's going to be tokenized. So, for example, we'll go back to a graphic designer who gets hired by an artist or a musician to create some sort of artwork to go with the token. So, in that case, you may cut a deal with a designer that maybe they do it for a flat fee or a percentage of the sale. So, if you decide that the artist is going to be getting a percentage of the sale, then that you have to remember that that's going to be part of the smart contract. So, meaning, moving forward in the smart contract will list you as the owner, the graphic designer as a percentage, get the percentage and then the platform will as well. And a lot of people get excited about the NFT space because of the secondary resale market, which is why it's like what you see out there as well, where people sell trading cards or sell artwork. That market is still burgeoning now. It's still very new. So, we're not seeing too much income from the secondary sales. But along with the smart contract, it'll list what the what you as the owner can continue to earn for a secondary sale. And that can be anywhere from five to ten percent, which is negotiable between you and the platform that you choose to sell your NFT on.

Sahara Pynes: OK, so aside from the contract with you and any other individual that you employ or retain on a contract, and that's a whole other episode on independent contractors. or maybe that will have been a prior episode at this point. But OK, so aside from the issues that that come up with retaining someone to create an NFT for you and the fee split, what other legal issues are sort of on the horizon in this space and entrepreneurs or artists need to be aware of?

Heidy Vaquerano: Well, especially in the music space, you have to look at what is going to what the NFT is composed of. So, if you have music and you're an independent artist, well, then most likely you own the rock sound recording and the publishing. If you're an artist signed to a major record label, or an indie label, then that record label is going to own the sound recording. So, you have to go back to the record label, and we treat this like any rights clearance for any media. We'll go to them and say, we want to convert this into an NFT, and you have an arm's length negotiation about what percentage of the NFT the record label will get. And along with the songwriters on the film and TV side, if you take an example of film posters that are then going to be converted into NFT, you have to look at the underlying IP. So, we're looking at the studio who owns the picture itself, and you may be using assets from the film that are embodied in the poster. Any third party individuals who are embodied and will also require separate clearance. So again, it's very detailed and you have to take it step by step to make sure that you have all the necessary clearances before you approve the smart contract and mint the NFT. Because, like I said, once the smart contract is locked in and on the blockchain, it's nearly impossible to rectify it or revise it.

Sahara Pynes: Hmm. Very interesting. So, in terms of another example, I was just thinking about, let's say from a fashion perspective, and I know that you don't practice primarily in that space. But let's say a fashion designer who is creating a dress that maybe is worn by someone famous who wins an Academy Award and they want to create an NFT replica of that dress or something like that? Does that work or what?

Heidy Vaquerano: Yeah.

Sahara Pynes: How does this translate?

Heidy Vaquerano: The designer will most likely own the design itself of the dress, which then that gets created and minted into the NFT. We won't get too deep into what the platform does or the engineers who actually do the minting. But at that point, the designer has the opportunity to tokenize it and they can decide, "I want to sell 500 of these for an auction starting at \$100." So what an important thing to know is that just because you've tokenized this, it doesn't mean that you, as the copyright owner, have given up any rights you, as the copyright owner, retain rights into the underlying work. The NFT token just gives the license to whoever purchases it.

Sahara Pynes: Okay, thank you for that. What else do our listeners need to know about NFTs today?

Heidy Vaquerano: My biggest thing is—jump into it. Don't think too hard if you're just somebody who wants to do to start collecting NFTs. It's important to get into the space and experience the purchasing. I think that was one of the most fun things I've done. If you are a graphic designer or an artist or you have digital, you have collectibles that you want to digitize. You definitely want to look back and consult with an attorney and say, "Hey, what are the rights clearances that are necessary?"

And another thing to keep in mind is, this is such a hot area that some of these platforms are overloaded with what they call the drops, which is the initial primary auction. So whenever you have a really hot artist or you're just somebody who has baseball cards that you want to digitize, be prepared that there is a long wait because a lot of these drops have been programmed into the platform, and we're looking at people who have three months of drops already in line. So, there is a little bit of a wait if you're interested in looking to sell anything as an NFT.

Sahara Pynes: Global supply chains, even on the blockchain issues, right?

Heidy Vaquerano: Exactly. I mean, they still humans who are working all of these and digitizing and creating the artwork. So, you come across the same issues, even though this is all new technology and new actually new media.

Sahara Pynes: Now, I know we haven't talked about this before, but I recently heard that China did something where they're preventing cryptocurrency use. So, does that mean that like nobody in China could buy an NFT, or and maybe we won't use this question, but can you talk about this at all?

Heidy Vaquerano: It's kind of just more along the lines of they can cut off any of the websites that let you purchase it. So, that's a little bit outside of the NFT because I think in those areas, they block certain websites, like sometimes Facebook isn't available, or Twitter or stuff like that.

Sahara Pynes: So. You may not have access to sell your NFT to people in China, depending on what local rules allowed to basically. OK I got it.

Heidy Vaquerano: Because the local jurisdiction doesn't allow those websites to run in those countries so that they can have the opportunity to purchase them.

Sahara Pynes: So that's billions and billions of people who won't be competing to buy your NFT essentially.

Heidy Vaquerano: Right. Right. The hope is that this is becoming more acceptable worldwide. A lot of the money is coming from the United Arab Emirates, the UAE. That's where a lot of the crypto whales come from, who have like millions of dollars. I'll share this story with you, I'm working with a client to start an NFT platform for Latin music artists. And we've teamed up with great designers based in the UK, and they were the first to sell a digital hoodie, and they sold that digital hoodie for \$26,000. It came with the original physical piece. They have yet to get in touch with the person who bought it to mail the physical piece.

Sahara Pynes: I was going to say, so what if the physical piece doesn't fit, can you return the digital piece?

Heidy Vaquerano: No way you can sell it.

Sahara Pynes: Yeah, I guess so. Oh my, OK. Well, I am super inspired to jump into the land of NFTs and I may have you help me with that offline, but I really thank you for being on this episode of Legally EmpowHERed. And I think that our listeners will also be inspired to jump into the world of NFTs. And thank you for sharing your knowledge and insight with us.

Heidy Vaquerano: Thank you for having me and letting me nerd out on true new media.



Sahara Pynes: Awesome.