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The Legal Framework for NFTs under French Private Law

Abstract

This paper investigates the private law qualification of non-fungible tokens (NFTs) within the French legal system, with particular attention to their proprietary status, mechanisms of transfer, and the doctrinal relevance of possession and control. Anchored in the framework of the Code civil, it examines how NFTs challenge established legal categories by virtue of their dematerialised and decentralised structure. Section 2 analyses the conceptual and evidentiary tensions arising from attempts to transpose classical notions of possession and delivery to digital tokens. The discussion then turns to control as a functional proxy, exploring its capacity to fulfil proprietary and remedial functions within blockchain-based environments. Section 3 advances the comparative dimension by assessing the regulatory approach of the 2024 Qatar Digital Asset Regulation, particularly its codification of control as a juridical basis for ownership and transfer. This model serves as a reference point for proposing statutory reform in French law that reconciles digital specificity with systemic continuity. The paper argues that the integration of NFTs into private law requires neither a displacement of existing concepts nor a doctrinal rupture but rather a refinement—namely, the legislative recognition of technologically grounded practices that preserve coherence while ensuring legal certainty in the governance of digital assets.

Keywords:
NFTs, French Private Law, Ownership, Transfer, Possession

Introduction

The concept of 'tokenisation' and the associated 'non-fungible tokens' or 'NFTs' have emerged as significant subjects of legal discourse, due largely to the proliferation of blockchain applications such as NBA Top Shot, Bored Ape Yacht Club, and various digital art platforms. Tokenisation, broadly understood as the process of creating digital representations of rights to assets on a blockchain, presents unique challenges to traditional property law frameworks. For property lawyers, NFTs raise fundamental questions regarding the nature of ownership in the digital realm, particularly within civil law jurisdictions where property rights are typically codified within exhaustive *numerus clausus* principles. This article examines the legal status of tokenised assets from a civil law perspective, with particular emphasis on the French legal system. Before addressing the research questions, it is essential to establish a comprehensive understanding of tokenisation and NFTs from both technological and legal standpoints. As

noted by scholars in this emerging field, 'the legal analysis [of NFTs] may depend entirely on what the technology is doing [1]'. While 'tokenisation' has become increasingly common terminology in both legal and technical discourse, its precise meaning varies considerably across contexts and jurisdictions.

In technical literature, tokenisation has been defined as 'the process of converting rights to an asset into a digital token on a blockchain [2]'. From a legal perspective, tokenisation may be conceptualised as 'a method that enables the representation of pre-existing legal rights in digital token form, recorded on a distributed ledger and transferable through that system'. What unifies these varying definitions is the connection to blockchain technology. For purposes of clarity, blockchain may be understood as 'a distributed ledger with growing lists of records (blocks) that are securely linked together via cryptographic hashes'. While Bitcoin represents the original and most widely recognised blockchain implementation, the Ethereum network has emerged as the dominant platform for NFT issuance and exchange, largely due to its robust smart contract functionality.

The European Union has begun addressing blockchain applications through legislative frameworks, most notably in the Markets in Crypto-Assets Regulation (MiCA). However, as stipulated in Article 2(3) of MiCA, the regulation 'does not apply to crypto [3]-assets that are unique and not fungible with other crypto-assets', thereby creating a regulatory gap concerning NFTs [4]. This exclusion underscores the need for dedicated legal analysis of NFTs outside existing crypto-asset frameworks. This article adopts a definition of tokenisation that encompasses the creation of unique digital representations on blockchain networks that may correspond to rights in either digital or physical assets. This definition intentionally remains open regarding the potential legal effects of tokenisation, which constitute the central inquiry of this article. The analysis will then explore the possibility for NFTs of being considered a new typology of movable thing, thereby becoming an object of property.

As novel intangible movable property, an NFT may represent an underlying artwork with physical material support, necessitating examination of the complex relationship between three distinct elements: the NFT (intangible movable property), the physical medium (tangible movable property), and the creative work itself (intellectual property). Crucially, ownership of the NFT does not automatically confer rights over either the physical support or the intellectual creation - these three property dimensions remain independent yet must coexist in practice [5]. This distinction becomes particularly significant when recognizing artistic NFTs as autonomous property rather than mere certificates or proofs of ownership (*instrumenta*), which would subordinate them to their underlying assets [6]. The nature of NFT ownership requires careful conceptualization. As Guadamuz observes, purchasing an NFT primarily involves acquiring the associated metadata file, which remains transferable through blockchain mechanisms. This characterization challenges common analogies to physical art objects - an NFT differs fundamentally from a signed copy of a work, instead resembling a verifiable record of ownership similar to a signed receipt. The metadata constitutes the essential property right, distinct from any physical or intellectual property it may reference. This separation between the NFT and its potential referents underscores the need for precise legal categorization of these digital assets.

In this line of reasoning, NFTs that align with this definition are distinguishable by virtue of their unique identifiers within a smart contract deployed on a blockchain network, typically following the ERC-721 standard on Ethereum or equivalent standards on alternative

networks. Unlike fungible tokens, which merely record balances associated with addresses, NFTs maintain distinct identities and ownership histories. The capacity to uniquely identify and transfer these tokens raises significant questions regarding their legal status as property under several jurisdictions. Despite the borderless nature of blockchain technology, property rights fundamentally derive from and are governed by national legal systems, necessitating analysis of NFTs within specific jurisdictional frameworks.

This article addresses three principal research questions concerning the legal treatment of tokenised assets. The first research question, examined in Section 1, concerns whether tokenised assets can be recognised as objects of private property under French civil law.
The second research question, addressed in Section 2, explores the concepts of possession and the related aspects of control and transfer as applied to NFTs within the French legal system. Given that blockchain-based tokens typically require cryptographic private keys to effect transfers, the analysis considers whether this technical control mechanism can be analogised to traditional possession (*possession*) under the French civil law system.
The third research question, covered in Section 3, adopts a comparative perspective examining how consensual systems of property transfer, such as that of France, might evolve to accommodate tokenised assets in light of dedicated legislative models. In particular, the discussion analyses the 2024 Qatari Digital Asset Regulation as a representative example of a special legal framework. In this system, tokens are recognised as autonomous legal objects. Hence, ownership is determined by control, rather than by traditional notions of physical delivery. This analysis aims to evaluate the normative potential of introducing a statutory definition of NFTs and a control-based transfer mechanism, thereby enhancing legal certainty without disrupting the structural coherence of the *Code civil*.
To address these research questions, the article employs doctrinal legal analysis supplemented by functional comparative methodology. The study engages particularly with French legal sources, including legislative provisions, judicial decisions, and scholarly commentary, while drawing comparative insights from other civil law jurisdictions. The inherently transnational nature of blockchain technology introduces complex private international law questions regarding applicable law and jurisdiction, which, while acknowledged, fall outside the scope of this inquiry. In this context, the characteristic of incorporeality is determined in an internationally uniform manner, irrespective of the formulation of the national conflict of laws. According to this definition, incorporeal objects are those that have no geographical anchorage. As Amy Held demonstrated, the question of the ‘seat’, or *situs*, of the blockchain or the assets recorded on it poses insoluble problems because of the pseudonymity of users and the decentralised nature of the ledger [7]. Consequently, for incorporeal objects, the rules of international property law and thus the connecting factors on which it is based are considered unsuitable and inapplicable.

The article proceeds as follows. Section 1 examines whether tokenised assets can qualify as objects of ownership rights under French private law. In this respect, Section 2 analyses the technological and legal dimensions of possession and control in the context of NFTs, addressing the mechanisms through which transfers occur and the legal implications of such transfers.
Then, Section 3 undertakes a comparative analysis of property transfer systems in view of recent legislative developments exemplified by Qatar’s Digital Asset Regulations of 2024. The purpose is to assess the legal efficacy of recognising digital control as the basis for the acquisition and transfer of NFTs. In doing so, the section considers how such a statutory

innovation could clarify the legal position of digital assets within the French civil law framework and potentially serve as a model for harmonised reform across civil law jurisdictions.

§1 Tokenisation as object of private property under French Private Law

The swift progression of digital technologies has recently brought legal systems confronting novel conceptual issues, particularly within the domain of patrimonial law. At present, a pressing question does now concern whether tokenised assets, and in particular non-fungible tokens (NFTs), can be regarded as objects of property under French civil law. This issue is far from merely speculative. Rather, it calls for both a grasp of the technical structure of NFTs and a firm grounding in the principles of French private law. NFTs, as unique digital records on a blockchain, challenge traditional legal categories and call for their reassessment from within.

NFTs are typically defined as ‘unique and indivisible digital tokens certified by blockchain [8]’. Nevertheless, this formulation does only capture their most basic facets. Technically, NFTs are sequences of alphanumeric characters created by smart contracts [9] and recorded immutably on a distributed ledger. Each NFT is distinguishable through unique metadata that identifies its issuer and its object of reference [10]. The French tax authority has offered a concise but significant legal definition, describing NFTs as ‘unique computer files created and stored on a digital transaction tracking ledger known as “blockchain"’ [11]. These characteristics distinguish NFTs from both corporeal movables and traditional incorporeal goods. As Le Guen aptly observes, NFTs belong to a ‘digital reality complementary rather than competitive with physical markets’ [12]. They operate in a space where scarcity, ownership, and transferability exist independently of any physical substrate [13].
Central to understanding NFTs is the process of tokenization. According to the French Financial Markets Authority (AMF [14]), tokenization is ‘a digital representation procedure enabling the recording, preservation, and transmission of an asset within a shared electronic recording system’ [15].
Yet, the relationship between NFTs and the assets they reference is far more complex than mere representation. It has been noted that NFTs ‘represent, point to, refer to, associate with, or are connected to an underlying asset’ [16]. Sometimes, the NFT does not merely represent a pre-existing object. It confers upon it a form of rarity that was previously absent [17]. In certain cases, the NFT creates a new object entirely, existing independently on the blockchain, without reference to any external good. This has profound legal implications, particularly when distinguishing between ‘off-chain’ tokenization, where the NFT refers to an external good, and "on-chain" tokenization, where the NFT itself is the only asset [18]. The latter scenario is especially important for property law, as the NFT becomes the sole object of value and ownership.

Similarly, French legal scholarship reflects this complexity. De Bonnafos highlights the inherent uncertainty surrounding NFTs, noting that their diversity makes any fixed definition likely to become outdated [19]. Depending on their use, NFTs have been variously classified as representative titles, digital certificates of ownership [20] [21], certificates of authenticity [22], or incorporeal movables [23]. This doctrinal fragmentation emphasises the tensions between new digital phenomena and traditional categories of French property law. Serfaty

offers a valuable model to navigate this complexity, insisting on a ‘tripartite separation’ between the NFT itself (an incorporeal movable), the physical medium (a corporeal movable), and the intellectual property right. Each of these must coexist but remains juridically independent [24].

Against this background, it can be argued forcefully that NFTs ought to be recognised as objects of property under French law within the category of movable assets (*biens meubles incorporels*).
Several considerations support this conclusion. First, NFTs exhibit all the characteristics necessary for appropriability; they are individually identifiable, transferable, and subject to exclusive control through private keys. Second, NFTs have clear economic value, evidenced by robust secondary markets. Third, their legal enforceability is secured through the immutable nature of blockchain records. These elements satisfy the classic criteria for recognising an object as property under French law: appropriability [25], patrimonial value [26], and opposability against third parties [27].

This position is further reinforced by doctrinal analysis. Legeais points out that NFTs ‘create and authenticate an original’ from what would otherwise be infinitely reproducible digital material [28]. Le Guen stresses that NFTs can circulate independently of any underlying asset when their relationship is not one of strict legal representation [29]. In a striking phrase, Prost and Jean-Baptiste note that NFTs enable the creation of property where none previously existed [30], thus contributing to an ‘extension of the domain of property’ [31], pushing the boundaries of what can be considered an object under French patrimonial law.

Central to these aspects is Guadamuz's standpoint which is worthwhile noting. The scholar observes that ‘when someone is purchasing an NFT, they are purchasing the metadata file and, as an NFT, this is transferrable as well’ [32]. Remarkably, he rejects the analogy that compares an NFT to a signed copy of an artwork, explaining that ‘the NFT is not a copy itself: instead, it is more like a signed receipt of a work, where the ownership is not of the work itself, but ownership of the receipt [33]’. For the sake of this inquiry, this distinction highlights the independence of the NFT as a legal object. Differently put, it is not the reproduction of the underlying work, nor a mere pointer to it. Instead, it is a distinct patrimonial entity.

Similarly, Serfaty’s analysis concurs with Guadamuz's understanding. More properly, he states that ‘a new incorporeal movable good, the NFT can have as its underlying asset a work of art whose support is material, which implies examining the relationships between the NFT (incorporeal movable), the support (corporeal movable), and the work (intellectual good). The ownership of the first does not, in itself, entail ownership of the second, nor of the third: these three properties are independent and must endeavour to coexist' [34]. In recognising NFTs as true property, Serfaty emancipates them from their underlying references. Unlike certificates of ownership or evidentiary titles (*instrumentum*), which remain dependent accessories or proofs of another right, NFTs stand alone as autonomous goods. Hence, the outlined reasonings lend support to a powerful argument for recognising NFTs as true movable assets, not merely as legal instruments or titles. In this view, the NFT is not reducible to the asset it references. Rather, it is itself the object of ownership.

Nevertheless, French legal scholarship is not unanimous. Scholars like Dross and Lafaurie [35] maintain that NFTs lack autonomous economic substance, arguing that they merely

represent underlying rights and therefore should be classified as *instrumenta*. In this reading, NFTs are documents evidencing legal relationships rather than proprietary objects in their own right [36]. A more nuanced approach is offered by Mekki, who develops a hybrid theory. He describes NFTs as digital *instrumenta* that also serve to create and preserve economic value [37]. The scholar explains that the NFT, by being unique and non-fungible, creates artificial scarcity and thus enhances the patrimonial value of the underlying asset. In his view, NFTs are not merely inert representations but active vehicles of economic valorisation for being assets per se.

Within the broader framework of French private law, it is clear that a sufficient conceptual flexibility exists to integrate NFTs as property without significant legislative disruption. As per Article 529 of the Civil Code, movable assets are a category broad enough to accommodate new digital realities. Recent case law, including a 2020 Nanterre Commercial Court decision recognising blockchain records as proof of ownership, signals an increasing judicial willingness to adapt classical property concepts to blockchain-based assets [38]. Analogously, market practices also support the proprietary classification of NFTs. They are treated as taxable patrimonial assets under French fiscal guidelines (BOI-RES-TVA-000140). The vigorous secondary markets for NFTs demonstrate that they are perceived, traded, and valued as property. From another angle, comparative developments point in the same direction. Although the European Union's MiCA Regulation excludes NFTs from its primary scope under Article 2(3), this reflects regulatory prudence rather than a conceptual rejection. Qatar's 2024 Digital Asset Regulations explicitly acknowledge certain tokenised assets as property, providing further evidence that recognising blockchain-based property is both conceptually sound and practically necessary. To this end, additional comparative observations regarding Qatar's framework will be offered in Section 3.

In a nutshell, French private law possesses both the conceptual foundations and the pragmatic adaptability necessary to recognise NFTs as objects of private property under the category of *biens meubles incorporels*. NFTs satisfy the classical requirements for property; they are individually appropriable, possess economic value, and are opposable *erga omnes*. The recognition of NFTs as property does also raise important questions regarding possession, control, and the mechanisms for transferring NFTs. In this sense, these issues are central to understanding how ownership is acquired, exercised, and transferred in digital contexts. Therefore, they form the focus of the next section (§2), which considers how traditional concepts of property transfer may be adapted to the specificities of blockchain-based assets.

§2 Possession, control and the transfer of NFTs

The concept of possession is of primary importance within French property law, functioning as both a factual situation and a normative gateway to ownership[39] through mechanisms such as usucapion and presumptive rights. Yet when applied to digital assets, specifically non-fungible tokens (NFTs),this traditional notion encounters unprecedented conceptual tension. NFTs, as explored in §1, are neither tangible objects nor purely representative instruments. Instead, they constitute unique digital assets recorded on distributed ledgers, distinguishable through metadata and accessible only via cryptographic credentials. The absence of any

physical substrate complicates the transposition of classic possession doctrines and invites deeper inquiry into the structural elements of *corpus* and *animus* that underpin possessory relationships in French law [40].

In positive French law, possession is defined under Article 2255 of the Civil Code as “the exercise, or the apparent exercise, of a right as if one were the holder of that right”. This twofold construct implies a physical dimension, traditionally mediated through acts such as detention, occupation, or exclusion of third parties [41]. That is because it requires both a material control (*corpus*) and an intention to possess (*animus*). In principle, the dematerialised nature of NFTs challenges this paradigm. Factually, a user ‘possesses’ an NFT not through physical grasp but by exerting exclusive control over the private key granting access to the digital token on a blockchain [42]. Control, in this case, is technical and cryptographic, not physical in the traditional sense. Against this backdrop, the UNIDROIT Principles on Digital Assets and Private Law (hereinafter "UNIDROIT Principles") respond directly to this evolution, recasting possession as a function of control [43]. In that regard, the Introduction of the Principles explicitly adopts ‘control’ as the legal analogue to possession in the digital context stating that a person ‘has control of a digital asset if that person has the exclusive ability to prevent others from obtaining substantially all of the benefit from the asset’[44].
In the case of NFTs, the control exerted through private keys aligns neatly with the modern understanding of possession as an effective ability to dominate and exclude. The UNIDROIT Principles’ formulation of control mirrors this development, equating factual mastery over the digital object (i.e. the private keys) with the legal status of possessor. Unlike traditional corporeal objects, whose possession is mediated by physical acts, NFTs can only be controlled through the interface of cryptographic credentials. Hence, the asymmetry of access, enabled by private keys and smart contracts, establishes a uniquely digital form of *corpus*, while the user’s intentional engagement with the NFT ecosystem supplies the necessary *animus*.
This doctrinal evolution has significant implications for the transfer of NFTs, especially within a consensual legal system such as that of France. While ownership of corporeal property traditionally requires delivery (*traditio*), which can be real or symbolic, the transfer of incorporeal movables like shares or debts is often effected through legal substitutes such as registration or notification. However, these techniques do not readily extend to NFTs, which lack a centralised register or tangible medium. Instead, the shift in control is enacted through a blockchain transaction, cryptographically signed and recorded, which alters the entity in effective possession of the token. As Kaisto et al. (2024) underscore, what determines control in this context is access to the private key associated with the wallet address that holds the token. Practically, the act of transfer is complete once this control is passed to another address [45].
Moreover, the transfer of NFTs mirrors the moment of appropriation. Both occur through cryptographic operation rather than physical apprehension. As such, a validated and recorded blockchain transaction functions as both the factual transfer and the legal act, dissolving the dichotomy traditionally existing between contract and delivery. More precisely, the technical asymmetry of access, enabled by cryptographic credentials and smart contracts, thus constitutes a uniquely digital *corpus*, while the user’s intentional engagement with the NFT ecosystem supplies the *animus* required by French law. In this respect, the validation of a blockchain transaction may be construed as a constitutive act of delivery and opposability, aligning with the expanded theory of *traditio* in digital contexts advocated by contemporary French doctrine [46]. As a result, this functional parity between traditional and digital forms

of possession enables the integration of NFTs within established property frameworks, avoiding the need for foundational conceptual reforms while accommodating technological innovation [47].

To continue, the immutable nature of blockchain transactions presents a fundamental tension with traditional revocability principles in property law. Whereas conventional transfers remain subject to rescission for error, fraud, or defective consent [48], blockchain's technical irreversibility creates normative friction. The UNIDROIT Principles address this by drawing a crucial distinction between factual control—which results in technical immutability [49] — and legal entitlement, which remains subject to revocation [50]. As a result, wrongful transfers, even if technically completed, do not confer valid title.
This approach mirrors the traditional French law distinction between factual possession and juridical ownership, supporting the viability of accommodating blockchain transactions without requiring structural modifications of the legal system.

The good faith acquisition framework under Principle 8 is of valuable guidance [51]. Unlike the Uniform Commercial Code's approach which begins with the *nemo plus juris principle* [52], UNIDROIT first defines the ‘innocent acquirer’ as a transferee who both obtains control and meets jurisdictional good faith standards [53]. This creates a disguised form of acquisitive prescription, granting defect-free title to good faith controllers despite chain-of-title irregularities. French courts could adopt similar reasoning by extending Article 2276's presumption reading ‘possession equals title [54]’ to digital control scenarios, while maintaining traditional good faith requirements derived from Article 1198(1) [55] and jurisprudential interpretations [56].

However, the functional equivalence between control and possession remains incomplete. Control alone, being purely factual, lacks the juridical dimension of possession. As a result, it cannot encompass *possession in corpore alieno* or reflect dismemberments of underlying rights. Rather than replacing possession, the law could incorporate control into Article 2255 of the French Civil Code as a parallel concept for incorporeal assets, while retaining traditional possession for tangible ones. This two-tier solution would enable acquisitive prescription [57] to apply to crypto-assets through control-based criteria.

Procedurally, French law's evidentiary flexibility [58] already accommodates blockchain proofs. Judicial recognition of cryptographic signatures as valid means of establishing control would satisfy both the UNIDROIT criteria and evidentiary standards [59]. Differently put, the challenge lies not in creating new rules but systematically applying existing ones to digital contexts.

In the end, NFTs do not require a radical overhaul of existing law but a thoughtful extension of established principles. Recognising control as a functional counterpart to possession in the digital realm, while upholding the foundational distinction between fact and law, allows French private law to evolve at no detriment of its conceptual integrity.

§3 Comparative and Concluding Remarks

The preceding analysis has shown that French private law, grounded in a conceptually coherent framework of possession and ownership, is theoretically capable of integrating NFTs

into its property categories without foundational disruption. While the French legal system is well-suited to this task, an effective and forward-looking regulatory response might lie in adopting a tailored legislative solution, informed by comparative insights that offer statutory clarity and functional precision. As legal systems worldwide confront similar questions, a comparative lens allows us to test the adequacy of domestic solutions against external models that have responded legislatively to the challenges posed by tokenised value.

Among these, the recent Qatar Digital Asset Regulation of 2024 presents a compelling point of reference. Its structure and substance reflect a deliberate effort to confer full legal status upon digital tokens not merely as technological artefacts or representational tools, but as autonomous assets [60] governed by a dedicated set of legal rules. Against this background, articles 8, 14, and 15 establish a coherent framework that clarifies the nature, transfer, and proprietary implications of tokens by centring on control as the key criterion of legal effect. Specifically, Article 8(1) defines a 'token' as 'a unique electronic data unit that is: (a) cryptographically secured; (b) a digital representation of real or personal property rights, including contractual rights; and (c) capable of being issued, transferred, or stored using distributed ledger technology'. This formulation aligns conceptually with contemporary French legal doctrine, which increasingly describes NFTs as 'unique and indivisible digital tokens [61]' whose legal distinctiveness arises from their singularity and traceability rather than from interchangeability. Furthermore, the regulation introduces a layered understanding of tokenised assets by distinguishing between the token itself and the asset it represents. This bifurcation mirrors French doctrinal constructs such as Serfaty's tripartite analysis of NFTs as composed of an intangible token, a possible corporeal support, and an intellectual object [62].

To continue, Articles 14 and 15 of the Qatar Regulation codify a control-based regime for transferring token ownership. In this respect, article 14(1) posits that 'a transfer of a permitted token may be effected only by transferring the control over the power to transfer the token'. Then, Article 15 reinforces that a transfer of the underlying by other means is void and without legal effect unless the transfer of control of the token itself occurs. In this framework, control is the legal proxy for possession, and hence for ownership. In essence, these provisions elevate control from a mere factual circumstance to a legally operative condition, provided they satisfy the minimum technical and functional conditions for *control of the power to transfer* specified in Article 15(a)-(c) [63].

Therefore, this model demonstrates the potential for a clear legislative act to resolve doctrinal ambiguities through legal recognition of technologically grounded practices. In line with UNIDROIT Principles, it supports the broader position that control, when precisely defined and verifiably exercised, may serve not merely as a factual substitute for possession but as a legally sufficient basis for ownership in the digital environment. Significantly, the Qatari Regulation accomplishes this without displacing or fragmenting traditional concepts of property. Rather, it introduces a distinct and complementary set of rules applicable to digital assets, thereby ensuring both legal specificity and structural consistency within the broader system of private law.

For French law, the relevance of this model is twofold. First, it demonstrates how control can be elevated from a functionally descriptive notion to one of full juridical consequence, provided it is integrated within a purpose-built statutory framework. Such an elevation would address the interpretive tensions identified in Section 2, particularly those concerning the evidentiary and proprietary status of digital control. These tensions are made more acute by

the current limitations of French private law, which, despite its well-recognised doctrinal flexibility, remains largely silent or conceptually ambiguous when applied to the architecture of blockchain-based assets. The Civil Code does not contain a definition of possession or delivery that accommodates the dematerialised nature of these digital objects [64]. Its reliance on concepts such as corpus and animus, both developed in relation to tangible goods, results in interpretative difficulties when applied to tokens that exist only as data structures.
Similar limitations arise with respect to mechanisms of transfer. Classical French doctrine continues to anchor transfer of property in the dual requirement of agreement and delivery [65]. Yet, blockchain transactions proceed without recourse to formal acts or centralised registration. Consequently, the legal effects of such transactions, particularly in cases involving third-party claims or allegations of fraud, are difficult to determine with certainty. Although some academic proposals, such as Mekki's suggestion that blockchain validation may constitute *traditio*, offer functional analogues, these remain doctrinal rather than legislative and cannot provide the necessary degree of legal certainty [66].
Second, the Qatari model affirms the regulatory value of adopting a legislative instrument specifically tailored to the structure and operation of digital tokens. A statutory definition modelled on Article 8(1) of the Qatari Regulation would bring clarity to the legal characterisation of non-fungible tokens and would eliminate the prevailing plurality of competing definitions within French doctrinal literature [67]. This definition would not only confirm their eligibility as property objects under French law but would also establish a clear conceptual separation between ownership of the token itself and ownership of the underlying asset to which it refers. Moreover, legislative provisions inspired by Articles 14 and 15 of the Qatari framework would realign the requirements for acquisition and transfer with the technical realities of blockchain systems. By explicitly codifying control as a basis for both possession and ownership, such provisions would eliminate the current uncertainty surrounding the evidentiary function and proprietary effect of digital possession.

At present, although French law recognises a rebuttable presumption of ownership arising from possession, it remains unsettled whether control over a digital asset produces the same presumption [68]. A legislative response grounded in the Qatari model would allow the French legislature to resolve this ambiguity, making explicit that the exercise of control, when it meets defined technical and functional criteria, carries presumptive legal effect in the context of digital property [69]. In this regard, the Qatari approach does not constitute a rupture from civil law tradition but rather a refinement of its categories. It demonstrates how existing legal principles may be adapted to the particularities of digital assets without sacrificing systemic coherence. By codifying control as a juridically effective condition for both possession and ownership, and by clearly delineating the relationship between token and underlying, such a legislative model would offer legal certainty, doctrinal clarity, and normative alignment with emerging international standards. It would also enable French private law to engage effectively with the technological and economic realities that increasingly shape the contemporary landscape of property relations.

[1] Kaisto, J., Geva, B., Gintis, M., & Meijer, R. (2024). Non-fungible tokens, tokenization, and ownership. *Computer Law & Security Review, 54*, 105996. https://doi.org/10.1016/j.clsr.2024.105996

[2] Argelich Comelles, C. (2022). Smart property and smart contracts under Spanish law in the European context. *European Review of Private Law, 30*, 215–226.
[3] The word originates from "cryptography," a method employed to secure and authenticate transactions. See
Ali, R., Barrdear, J., Clews, R., & Southgate, J. (2014). Innovations in payment technologies and the emergence of digital currencies. *Bank of England Quarterly Bulletin, 54*, 262.
[4] There is no universally agreed definition of crypto assets yet. Definitions that have been given thus far are being revisited from time to time and change as necessary as the crypto asset landscape continues to evolve. There is no universally agreed terminology. The term “crypto” and “digital” are sometimes used interchangeably in describing these assets or sometimes the latter is used to refer to a broader category including, but not limited to, the former.
[5] Serfaty, V. (2023). Réflexions sur la nature juridique du NFT et son rapport à l'œuvre de l'esprit. *Dalloz IP/IT, 77*(II)(A).

[6] Guadamuz, A. (2021). The treachery of images: Non-fungible tokens and copyright. *Journal of Intellectual Property Law & Practice, 16*, 1367–1368.
[7] Held, A. (2023). Crypto assets and decentralised ledgers: Does situs actually matter? In A. Bonomi, M. Lehmann, & S. Lalani (Eds.), *Blockchain and private international law* (pp. xx–xx). Hart Publishing.
[8] Gleize, B. (2021). L’irrésistible ascension des jetons non fongibles. *Revue Lamy Droit Civil, 194*.
[9] Most often following the ERC-721 or an equivalent standard.
[10] Le Guen, J. (2021b). Tokénisation et crypto-actifs : Réalité plurielle et enjeux de qualification. *Cahiers de droit européen, 6*, 41.
[11] Direction générale des finances publiques [DGFiP]. (2024). *Digital assets VAT guidelines: BOI-RES-TVA-000140* [Institutional guidance].

[13] Fairfield, J. A. (2014). Smart contracts, bitcoin bots, and consumer protection. *Washington and Lee Law Review Online, 36*, 71.
[14] *Autorité des marchés financiers*
[15] Autorité des marchés financiers. (2020). *État des lieux et analyse relative à l'application de la réglementation aux security tokens* [Institutional report].
[16] Mekki, M. (2024). Actifs numériques. In *Répertoire commercial Dalloz*.
[17] *Ibidem*
[18] Specifically, ‘There are two types of asset tokenisation. The first is tokenisation that represents a pre-existing off-chain real asset. This type of asset tokenisation includes financial assets in conventional securities, non-financial assets such as real estate, and commodities such as gold. The second consists of tokens that are native to the blockchain, and which exist and trade only on-chain. This second type of asset tokenisation includes financial assets issued on DLT and equity securities. Tokens representing a pre-existing off-chain real asset carry the rights of the assets that they represent’.
Bonomi, A., Lehmann, M., & Lalani, S. (Eds.). (2023). *Blockchain and private international law*. Hart Publishing.
[19] Bonnafos, V. (2022). Plaidoyer pour un cadre de droit souple applicable aux jetons non fongibles. *Revue pratique de la prospective et de l'innovation, 2*, 20–21.
[20] Accordingly, the Fiscal Administration stated that, ‘If the use of this technology can arise in extremely diverse situations, NFTs often serve as digital certificates attesting to the ownership of a tangible or intangible asset’.

Direction générale des finances publiques [DGFiP]. (2024). *Digital assets VAT guidelines: BOI-RES-TVA-000140* [Institutional guidance].

[21]Mathis, B., & Gasser, A. (2022). Le smart contract entre fausses pistes et angles morts. *Sécurité & Fiabilité, 3*, 54–22; Douet, F. (2023). *Fiscalité 2.0* (4th ed.): 'NFs are digital certificates that enable the authentication, by means of a unique and secure code (a private key associated with the NFT), of the underlying asset to which they are linked'.

[22] Cf. Conseil supérieur de la propriété littéraire et artistique. (2022). *Rapport de la mission sur les jetons non fongibles* [Institutional report].

[23] Serfaty, V. (2023). Réflexions sur la nature juridique du NFT et son rapport à l'œuvre de l'esprit. *Dalloz IP/IT, 77*(II)(A).

[24] *Ibidem*

[25] Arts. 516, 527, and 528 *Code civil*.

[26] Art. 544 *Code civil.*

[27] Arts. 1198, 1321ff. *Code civil.*

[28] Legeais, D. (2022). Les NFT sont-ils des actifs numériques? *Revue de droit bancaire et financier, 4*, 32–11.

[29] Le Guen, J. (2021b). Tokénisation et crypto-actifs : Réalité plurielle et enjeux de qualification. Cahiers de droit européen, 6, 41.

[30] Prost, J., & Jean-Baptiste, A. (2022). Les non-fungible tokens saisis par le droit. *Dalloz IP/IT, 260*(II)(A).

[31] Cf. Conseil supérieur de la propriété littéraire et artistique. (2022). *Rapport de la mission sur les jetons non fongibles* [Institutional report].

[32] Guadamuz, A. (2021). The treachery of images: Non-fungible tokens and copyright. *Journal of Intellectual Property Law & Practice, 16*, 1367–1368 ; quoted in Kaisto et al. (2024).

[33] *Ibidem*

[34] Serfaty, V. (2023). Réflexions sur la nature juridique du NFT et son rapport à l'œuvre de l'esprit. *Dalloz IP/IT, 77*(II)(A).

[35] Lafaurie, K. (2024). Regards du juriste. In G. Yildirim (Ed.), *Patrimoine numérique et droit patrimonial de la famille* (p. 13). Dalloz Lefebvre.

[36] Association Henri Capitant. (2020). *Vocabulaire juridique Cornu* (13th ed.). Presses Universitaires de France. (entries *Instrumentum*, *Negotium*). For more details, s. Dross, W. (2023). Jetons non fongibles (JNF) et droit des biens. *Revue Lamy Droit des Affaires Immobilières, 206*,1; Balat, N. (2023). NFT et droit des contrats. *Revue Lamy Droit des Affaires Immobilières, 206*, 2.

[37] Mekki, M. (2024). Actifs numériques. In *Répertoire commercial Dalloz*.

[38] The evolving classification of digital assets within French civil law is exemplified by the 2020 decision of the Commercial Court of Nanterre, which characterized bitcoin as a fungible and consumable intangible asset (*bien fongible* et *consommable*). The case involved a dispute over the ownership of Bitcoin Cash (BCH) following a hard fork, where the court applied the legal framework governing contracts of loan for consumption (*prêts de consommation*) under Article 1892 of the Civil Code. As a result, the title to the bitcoin passed to the borrower upon delivery, entitling them to the proceeds of the fork. This decision demonstrates the possibility of traditional

categories of personal property (*biens meubles incorporels*) to accommodate emerging digital phenomena without legislative reform. Similarly, It does also illustrate the courts' commitment to employ established legal principles – including but not limited to the distinction between tangible and intangible chattels and the transfer of ownership in fungible goods—to resolve disputes involving digital assets and to recognise their proprietary character.
For more details, s. *Paymium v. BitSpread*, (Commercial Court of Nanterre, Feb. 26, 2020).
[39] Cf. Art. 2256 *Code Civil* reading 'one is always presumed to possess for oneself and as owner, unless it is proven that one began to possess on behalf of another'.
[40] Leveneur, L., & Mazeaud-Leveneur, S. (2023). *Droit des biens: Le droit de propriété et ses démembrements* (2nd ed.). LexisNexis.
[41] Malaurie, P., Aynes, L., & Julienne, M. (2021). *Droit des biens* (9th ed.). LGDJ.
[42] CoinGuides. (n.d.). *How to prove you own Bitcoin and Ethereum – Proof of ownership*. https://coinguides.org/prove-bitcoin-address-ownership/
[43] Specifically, the 'control' assumes a role that is a functional equivalent to that of 'possession' of movables'. UNIDROIT Working Group on Digital Asset & Private Law. (2021b). *Issues paper* (UNIDROIT 2021 Study LXXXII-W.G.4 – Doc. 2).
[44]UNIDROIT. (2021a). *Digital assets and private law principles*, Introduction, §III (Scope of the Principle).
[45] Kaisto et al. (2024), 8.
[46] However, the High Legal Committee of the Paris Financial Centre's (*Le Haut Comité Juridique de la Place financière de Paris* – HCJP) recent analysis on MiCA underscores that the legal effectuation of NFT transfers is not monolithic. Beyond the technical transfer on the blockchain, the HCJP identifies two additional modalities: first, the manual transfer of wallet keys, which can be analogized to a form of delivery by remise, and second, the registration of the transfer in an intermediary's independent ledger, akin to the inscription *en compte* for financial instruments. These alternative modalities reflect the regulatory imperative to accommodate both decentralized and custodial structures within the legal framework. Notably, in all three scenarios-on-chain transaction, key delivery, and registry inscription-the ultimate effect is the transfer of control to the transferee, who thereby acquires the full spectrum of prerogatives associated with the asset.
Haut Comité Juridique de Place. (2024). *Rapport sur le règlement MiCA* [Institutional report].
[47] Nonetheless, challenges remain in aligning these evolving digital practices with the rigour of French legal taxonomies. The multiplicity of NFT functions complicates their classification: they may operate as certificates, instruments, or autonomous goods, depending on context. This heterogeneity is particularly salient in transfer scenarios. Where NFTs serve as mere evidentiary tokens (e.g., a certificate of attendance or proof of participation), transfer might resemble the endorsement of a document. Where they embody the object itself—particularly in artistic or collectible contexts—transfer assumes the full legal consequences of conveying property. The legal effect of transfer must therefore be tailored to the nature of the NFT in question.
Cf. Vidal Serfaty, *Réflexions sur la nature juridique du NFT et son rapport à l'oeuvre de l'esprit*, Dalloz IP/IT, 2023, at 77, §II(A).

[48] Articles 1130-1134 *Code Civil*
[49] UNIDROIT Principles, *Principle* 6(1).

[50] Cf. aspects pertaining to custody (UNIDROIT Principles, Principle 11(3)(a)) and *possessio in corpore alieno* (art. 2255 Code Civil).
[51] UNIDROIT *Principles, Principle* 2(2); *Principle* 8.
[52] Section 2-504(a).
[53] UNIDROIT Principles, Principle 8(1) and (2).
[54] *En fait de meubles, la possession vaut titre*.
[55] 'Where two successive purchasers of the same tangible movable asset derive their title from the same person, the one who first obtained possession of the asset shall prevail, even if their right is subsequent, provided they acted in good faith'.
[56] Cour de cassation [Cass.] civ. 1re. (1965, March 23). *Bulletin civil I*, No. 206. [Court decision] ; Cour de cassation [Cass.] com. (2006, March 7). *No. 04-13.569*. [Court decision]
[57] As defined by Art. 2258 Cod Civil reading 'a means of acquiring property or a right by virtue of possession, without the person asserting it being required to produce title or being met with the defence of bad faith'.
[58]Articles 1353-1386(1) Code civil.
[59] UNIDROIT Principles, *Principle* 2(2); *Introduction*, §0.13: 'These Principles establish that digital assets (as defined in Principle 2(2)) are susceptible to being the subject of proprietary rights, without addressing whether they are considered 'property' under the other law of a State'.
[60] Cf. Guadamuz, A. (2021). The treachery of images: Non-fungible tokens and copyright. *Journal of Intellectual Property Law & Practice, 16*, 1367–1368.
[61] Gleize, B. (2021). L'irrésistible ascension des jetons non fongibles. *Revue Lamy Droit Civil, 194*.
[62] Serfaty, V. (2023). Réflexions sur la nature juridique du NFT et son rapport à l'œuvre de l'esprit. *Dalloz IP/IT, 77*(II)(A).
[63] Namely, 'control over the power to transfer a permitted token is held by a person ("P") if:
(a) P is capable of transferring the token to another person through token infrastructure and in accordance with the procedures and protocols of that infrastructure;
(b) P is capable of effecting the transfer by instructing another person; or
(c) P otherwise has the power to effect the transfer'.
[64] Particularly through the category of movable assets and the consensual model of property transfer (Article 1196 Code Civil).
[65] Be it real or fictive
[66] As noted above, NFTs are alternately described as certificates, evidentiary instruments, or autonomous incorporeal goods.
[67] That is because of the wording of Article 2276 C. civ. reading 'possession of a movable thing is equivalent to ownership' (*En fait de meubles, possession vaut titre*).
[68] Moreover, the Qatari regulation offers a model for reconciling ownership of tokens and underlying rights. As noted in prior sections, NFTs may reference artworks, memberships, or real-world assets. A dedicated statute could also specify the legal effects of a transfer of the NFT on these secondary rights, if any. Differently put, it could clarify when control over the token implies (or does not imply) rights over the underlying. The current silence of French law on this point risks conflating property and contract, with implications for third-party protection, security interests, and inheritance.
[69] From a theoretical perspective, the adoption of a dedicated legislative framework—rather than revising the Civil Code itself—would reflect the principle *lex specialis*

derogat generali (cf. D. 1.3.23), according to which a specific norm overrides a general one in case of conflict. In such a manner, introducing a specialised statute on digital assets such as NFTs would preserve the structural integrity and doctrinal coherence of the *Code civil*, thereby avoiding unnecessary disruption to its foundational architecture.
For more details on the historical development of special rule, cf. Halpérin, J.-L. (2012). Lex posterior derogat priori, lex specialis derogat generali: Jalons pour une histoire des conflits de normes centrée sur ces deux solutions concurrentes. *The Legal History Review, 80*, 353.

References

[1] Ali, R., Barrdear, J., Clews, R., & Southgate, J. (2014). Innovations in payment technologies and the emergence of digital currencies. *Bank of England Quarterly Bulletin, 54*, 262.
[2] Argelich Comelles, C. (2022). Smart property and smart contracts under Spanish law in the European context. *European Review of Private Law, 30*, 215–226.
[3] Association Henri Capitant. (2020). *Vocabulaire juridique Cornu* (13th ed.). Presses Universitaires de France.
[4] Autorité des marchés financiers. (2020). *État des lieux et analyse relative à l'application de la réglementation aux security tokens* [Institutional report].
[5] Balat, N. (2023). NFT et droit des contrats. *Revue Lamy Droit des Affaires Immobilières, 206*, 2.
[6] Bonomi, A., Lehmann, M., & Lalani, S. (Eds.). (2023). *Blockchain and private international law*. Hart Publishing.
[7] Bonnafos, V. (2022). Plaidoyer pour un cadre de droit souple applicable aux jetons non fongibles. *Revue pratique de la prospective et de l'innovation, 2*, 20–21.
[8] CoinGuides. (n.d.). *How to prove you own Bitcoin and Ethereum – Proof of ownership*. https://coinguides.org/prove-bitcoin-address-ownership/
[9] Conseil supérieur de la propriété littéraire et artistique. (2022). *Rapport de la mission sur les jetons non fongibles* [Institutional report].
[10] Cour de cassation [Cass.] civ. 1re. (1965, March 23). *Bulletin civil I*, No. 206. [Court decision]
[11] Cour de cassation [Cass.] com. (2006, March 7). *No. 04-13.569*. [Court decision]
[12] Douet, F. (2023). *Fiscalité 2.0* (4th ed.).
[13] Dross, W. (2023). Jetons non fongibles (JNF) et droit des biens. *Revue Lamy Droit des Affaires Immobilières, 206*, 1.
[14] Fairfield, J. A. (2014). Smart contracts, bitcoin bots, and consumer protection. *Washington and Lee Law Review Online, 36*, 71.
[15] Direction générale des finances publiques [DGFiP]. (2024). *Digital assets VAT guidelines: BOI-RES-TVA-000140* [Institutional guidance].
[16] Gleize, B. (2021). L'irrésistible ascension des jetons non fongibles. *Revue Lamy Droit Civil, 194*.
[17] Guadamuz, A. (2021). The treachery of images: Non-fungible tokens and copyright. *Journal of Intellectual Property Law & Practice, 16*, 1367–1368.

[18] Halpérin, J.-L. (2012). Lex posterior derogat priori, lex specialis derogat generali: Jalons pour une histoire des conflits de normes centrée sur ces deux solutions concurrentes. *The Legal History Review, 80*, 353.
[19] Haut Comité Juridique de Place. (2024). *Rapport sur le règlement MiCA* [Institutional report].
[20] Held, A. (2023). Crypto assets and decentralised ledgers: Does situs actually matter? In A. Bonomi, M. Lehmann, & S. Lalani (Eds.), *Blockchain and private international law* (pp. xx–xx). Hart Publishing.
[21] Kaisto, J., Geva, B., Gintis, M., & Meijer, R. (2024). Non-fungible tokens, tokenization, and ownership. *Computer Law & Security Review, 54*, 105996. https://doi.org/10.1016/j.clsr.2024.105996
[22] Lafaurie, K. (2024). Regards du juriste. In G. Yildirim (Ed.), *Patrimoine numérique et droit patrimonial de la famille* (p. 13). Dalloz Lefebvre.
[23] Le Guen, J. (2021a). *Tokénisation et crypto-actifs*.
[24] Le Guen, J. (2021b). Tokénisation et crypto-actifs : Réalité plurielle et enjeux de qualification. *Cahiers de droit européen, 6*, 41.
[25] Legeais, D. (2022). Les NFT sont-ils des actifs numériques? *Revue de droit bancaire et financier, 4*, 32–11.
[26] Leveneur, L., & Mazeaud-Leveneur, S. (2023). *Droit des biens: Le droit de propriété et ses démembrements* (2nd ed.). LexisNexis.
[27] Malaurie, P., Aynes, L., & Julienne, M. (2021). *Droit des biens* (9th ed.). LGDJ.
[28] Mathis, B., & Gasser, A. (2022). Le smart contract entre fausses pistes et angles morts. *Revue internationale Sécurité & Fiabilité, 3*, 54–22.
[29] Mekki, M. (2024). Actifs numériques. In *Répertoire commercial Dalloz*.
[30] Paymium v. BitSpread, Commercial Court of Nanterre (2020). [Court case]
[31] Prost, J., & Jean-Baptiste, A. (2022). Les non-fungible tokens saisis par le droit. *Dalloz IP/IT, 260*(II)(A).
[32] Serfaty, V. (2023). Réflexions sur la nature juridique du NFT et son rapport à l'œuvre de l'esprit. *Dalloz IP/IT, 77*(II)(A).
[33] UNIDROIT. (2021a). *Digital assets and private law principles*.
[34] UNIDROIT Working Group on Digital Asset & Private Law. (2021b). *Issues paper* (UNIDROIT 2021 Study LXXXII-W.G.4 – Doc. 2).
[35] Yildirim, G. (Ed.). (2024). *Patrimoine numérique et droit patrimonial de la famille*. Dalloz Lefebvre.