

# The Distributed Ledger

## Blockchain, Digital Assets and Smart Contracts

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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### The Nice Classification Adds Language Related to NFTs, the Metaverse and Crypto Assets

Over the last few years, there has been increasing debate surrounding the appropriate trademark classification for digital assets. The most recent edition of the Nice Classification (the 12th Edition), which took effect on January 1, 2023, provides certain important clarifications to this growing area.<sup>1</sup>

#### The Nice Classification

The Nice Classification is an internationally-recognized system, established under the Nice Agreement, that is used to classify goods and services for the registration of trademarks and service marks. Each of the 92 countries that is a party to the Nice Agreement is required to use the Nice Classification in connection with the registration of trademarks in its country, thereby creating consistency as each trademark is required to be registered within one of a number of specified classes.

A Committee of Experts, comprised of representatives from all countries that make up the Nice Agreement, is responsible for updating the Nice Classification, and these updates are published every year in the form of new versions and every three years in the form of new editions.<sup>2</sup> Annual versions reflect all changes made by the committee since the adoption of the prior version, such as the addition of new goods and services to the list. New editions reflect all amendments adopted since the prior annual version and other changes such as the transfer of goods or services from one class to another.

#### New Additions to the Nice Classification

The 12th Edition addresses the classification of digital assets by updating certain classes with the applicable goods and services:

- **Class 9**, which already governs “apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media” has been updated to also include “downloadable digital files authenticated by non-fungible tokens [NFTs].” Notably, the goods covered are the digital files that are linked to or

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<sup>1</sup> The 12th Edition of the Nice Classification can be found on the [World Intellectual Property Organization’s website](#).

<sup>2</sup> Until January 1, 2023, new editions were published every five years.

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identified by the NFT. A registration pursuant to Class 9 would potentially not extend to physical goods or other utility functions that can be authenticated by the NFT.

- In addition, the classification for goods previously described as “downloadable computer software for managing cryptocurrency transactions using blockchain technology” was amended to “downloadable computer software for managing *crypto asset* transactions using blockchain technology,” thereby clearly expanding this class to include other blockchain-based digital assets, such as NFTs.
- **Class 41**, which broadly governs the following services: “education; providing of training; entertainment; sporting and cultural activities,” has been updated to include a specific reference to “providing online virtual guided tours,” which ostensibly covers certain metaverse activities.

- **Class 42**, which broadly governs “quality control and authentication services,” and already included a reference to “cryptocurrency mining / cryptomining,” was amended to reference “mining of *crypto assets* / cryptomining.” As with the amendment to Class 9, this too reflects an acknowledgment of a broader category of digital assets besides cryptocurrencies.

### Key Takeaways

The 12th Edition of the Nice Classification offers practitioners welcome guidance on the classification of various digital assets. As Web3 continues to evolve, we expect to see further updates to and guidance around trademark classifications for digital assets and related services.