

Metaverse vs Metaverse? Legal implications

AIBL Event, 7 February 2023

Legal implications?

A need for humility...

- Difficult to assess legal implications before pinning down the concept.
- Metaverse: no consensus on meaning
- Metaverse is not yet built.
- Impossible to definitively say what the Metaverse is or will be.
- We can try to think what it is going to be.
- A democratised internet built on gaming technologies
- A long term endeavour, likely 5-10 years before we start to see an impact on the daily lives of large portions of society.
- We already have digital lives, but the ways we interact digitally will be more prevalent and there may be more options for our interactions.
- Interactions. Digital assets. Investments. Infringements. Frauds. Contracts. Disputes. Need for law and for DR mechanisms.

Legal implications?

Selected topics

- IP Law
- Dispute Resolution
- Enforcement
- Civil law
- Money laundering
- Data protection and Privacy
- Employment

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https://finance.yahoo.com/video/nft-artist-metabirkins-project-aims-200930209.html

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NFT artist: 'MetaBirkins' project aims to create 'same kind of illusion that it has in real life'

DIGITAL FASHION MASON ROTHSCHILD: Thank you.

yahoo!finance ARTIST MASON ROTHSCHILD LAUNCHES 100 METABIRKINS NFTS LIVE

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f NFT artist: 'MetaBirkins' project aims to create 'same kind of illusion that it has in real life'

Recherche

IP Law

Hermès v. Digital Artist Mason Rothschild (1)

- Hermès argued in the lawsuit, filed a year ago in the US District Court for the Southern District of New York, that Rothschild's use of the "MetaBirkin" name for his NFT project improperly appropriated the Birkin trademark.



IP Law

Hermès v. Digital Artist Mason Rothschild (2)

- Citing social media posts and press coverage, the complaint said that consumers were duped into believing that the NFTs were created or endorsed by Hermès, which isn't the case.
- Hermès accused Rothschild of harming the fashion brand's ability to enter the NFT space.

IP Law

Hermès v. Digital Artist Mason
Rothschild (3)



- Are the MetaBirkins protected expression?
- The Roger test, first defined in the decision of the 1989 case [Rogers v. Grimaldi](#), allows artists to use a trademark in their work without permission as long as the use has a minimal level of artistic relevance and doesn't explicitly confuse consumers.
- Rothschild might try to argue that consumers wouldn't be confused because Hermès is using the trademark on a real world handbag while he is using it on a digital asset.
- As other brands and fashion houses like Louis Vuitton U.K. Ltd., Gucci, and Nike Inc. begin selling their own NFTs, would a modern consumer likely believe that an NFT with the Birkin label is being sold by Hermès?

Nice classification

- Most applicants try to register their trademarks in Class 9 for digital goods.
- However, it is questionable whether these products should be classified in this class at all. Example: manufacturers of watches want to market the digital versions of their watches in the metaverse. For this purpose, they register their trademark in Class 9.
- See 12th edition of the Nice Classification, which entered into force on 1 January 2023, the goods in Class 9 was amended by “downloadable digital files authenticated by non-fungible tokens”.
- Brands will be forced to revise the classes of goods and services covered by their trademarks and potentially file new trademark applications to protect their brand and trademarks.



Dispute Resolution

- Disputes re virtual real estate are also to be expected.
- What increases the value of a specific plot of land? Location and scarcity.
- What if the metaverse platform decides to remove the sea in front of what I have bought as an expensive waterfront land?
- Or what if it decides to increase the number of plots available?

Dispute Resolution

- How will disputes be resolved in the Metaverse?
- Claims by Users against Metaverse Platforms
- Claims between Users

Dispute Resolution

Claims by Users against Metaverse Platforms (1)

- Many nominally 'decentralised' Metaverse platforms still incorporate centralised elements.
- Decentralised platforms will require some assets to be held by a centralized entity.
- E.g. Decentraland Foundation holds the IP rights over and makes available the tools needed to access the platform as well as the platform's website.
- Claims by users against Metaverse platforms are therefore likely to be governed and resolved in the same manner as other, more typical web service providers.
- Terms and conditions signed with the centralized entity; will determine the user's legal rights vis-à-vis the platform, as well as the procedure for resolving disputes.
- Limitation of liability.
- Specific disclaimers of liability in relation to the content that can be found on the platform, including in relation to the content found on virtual land owned by users.

Dispute Resolution

Claims by Users against Metaverse Platforms (2)

- Decentraland's T&Cs require disputes to be resolved under the arbitration rules of the International Chamber of Commerce, with the arbitration seat (i.e. the legal place of the arbitration) in Panama.
- Sandbox has a jurisdiction clause in favour of the Hong Kong courts.
- T&Cs are currently very significantly weighted in favour of the platforms. Very little recourse is available to users.
- Users will seek to rely on any applicable consumer protections laws in their home jurisdiction.
- This trend is emerging in relation to claims against other Web3 companies.
- See *Ang v Reliantco Investments Ltd* [2019] EWHC 879 (Comm): a user of a cryptocurrency platform is a consumer under the Brussels Regulation.

Dispute Resolution

Claims between Users (1)

- More interactions, more disputes.
- Patchwork of platforms, patchwork of dispute resolution mechanisms.
- 3 main types of mechanisms
- (I) Resolution by the (centralised) platform. Mechanisms set out in the T&Cs. E.g. Roblox's T&Cs provide that disputes between users and creators may be escalated to Roblox's Customer Service team. Decision is final. Disputes between users are effectively decided by the platform. No guarantee of due process. No prospect of appeal. Decision can be enforced instantaneously without any further action by the users.
- (II) Resolution by DAO (no centralised entity). Emergence of platform-specific inter-user dispute resolution mechanism. Users agree that their disputes should be resolved by outsourcing the decision-making process to other users – potentially via a DAO. Alike decisions in relation to the platform itself, which are already entrusted to users through DAO (Users voting according to which side of the argument they favour the most.
- Due process? Fairness?

Dispute Resolution

Claims between Users (2)

- (III) Resolution by decentralised arbitration. Metaverse users who have contracted by way of a smart contract may agree that their disputes are to be decided by a decentralised arbitration court, which is independent of the Metaverse platform, such as Kleros, Aragon or Jur.
- Randomly selected panel of arbitrators. Arbitrators paid via blockchain to arbitrate disputes under smart contracts.
- Under Kleros, selected arbitrators have three days to submit their decision based on a limited range of options under the smart contract (e.g. “Reimburse Claimant” or “Extend deadline for contract”). Decisions are then enforced on-chain under the smart contract.
- Drawbacks of these mechanisms: ill-equipped to handle high value and complex disputes. Moreover, many inter-user disputes will arise from scenarios where the users have not agreed to resolution by the platform, DAO or by decentralised arbitration (e.g. in the case of misappropriation of digital assets).

Enforcement

- Choice of forum, ease of enforcement.
- Traditional courts v Arbitration
- The resolution of a dispute is meaningless if its outcome cannot be enforced by the successful party.
- Users will need assurance that they will be able to enforce the outcome of any procedure put in place to resolve their dispute with another user.
- Difficulties in light of the anonymity afforded by many platforms.
- Enforcement solely within the user's 'home' platform may not go far enough; some will be looking for ways to enforce decisions in the real world, and potentially in other platforms.

Data security and privacy

- The metaverse creates new opportunities to collect a wide range of data, such as facial expressions, gestures, physiological reactions to certain content, and data about a VR headset's immediate environment. This increasingly puts the spotlight on data protection.

Civil law issues

- Selected issues
- Death of the avatar?
- Violation of the personality rights (e.g. good reputation) of the avatar.
- Misuse of personal data relating to the avatar.
- Can anyone be sued for infringements in the metaverse against another avatar? And if yes, who?
- What rights do users who buy a virtual plots/land/property in the metaverse have in these areas? Can other users enter such areas in the metaverse with their avatar without permission?

Money Laundering

- SEC: The ability to conduct NFTs across borders via the Internet without regard to geographic distance and with almost no delay makes NFTs vulnerable to money laundering of illegal proceeds.
- Grey area: wash trading
- Criminals fake a higher market value: they sell their own NFTs for a higher value to a wallet that belongs to themselves. NFTs are shifted back and forth between the wash trader's own wallets. To the outside world, the NFTs appear to be traded by different people and are in high demand (the fear of missing out is a powerful force in the crypto world).

Employment law

- Selected issues
- Transferring parts of the working environment to the metaverse has a number of employment law implications.
- Employers have the right to unilaterally instruct employees to work in the metaverse on a temporary basis for a specific reason (employer's general right of direction).
- Compliance with occupational health and safety requirements.
- As collaboration in the metaverse becomes more international, determining which jurisdiction's employment law applies is likely to become increasingly difficult.
- Workers paid in cryptocurrency or in CHF?
- Corporate guidelines for working in the metaverse similar to those previously drawn up for mobile work?

Thank you!