

Intellectual Property and Metaverse

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Abstract: *IP is a broad concept. It refers to mental creations. Owners can monetize their content (within reason). Intellectual property law is broken when content is monetized without the owner's permission. Violations may face serious financial consequences. The Metaverse is combinations of emerging digital experiences powered by cloud computing, the internet, and network connectivity. Virtual reality includes digital components. This article studies the relation between Metaverse and IP law along with its issues.*

Keywords: Metaverse, Intellectual Property

1. Introduction

The Metaverse is a type of virtual reality world that consists of online, shared, and persistent digital locations. Its purpose is to provide a setting for people to interact socially, have fun, and do business. It is generally regarded as the next generation of mobile internet. Because of advances in technology, the lines between our real and our virtual lives continue to blur and become increasingly entwined. People will spend the majority of their time in the Metaverse enjoying virtual lives, which will be the culmination of this type of blending. Innovations in virtual reality, augmented reality, distributed ledger systems, and blockchain are the most important factors that have contributed to the development of the Metaverse. The game industry, the entertainment industry, educational institutions, and financial institutions are the most likely to have an impact on the development of Metaverse. It is also very likely that cryptocurrencies will see heavy use in the transactions that take place across the various Metaverse platforms. Taking into consideration this shift, there will be new challenges and dangers for users, owners, and everyone else who will be participating in the process. One of these concerns relates to intellectual property rights, and it will be essential for all parties involved in the process to have a solid grasp of the IPRs that are connected to the overall configuration.¹

Meaning of Metaverse

The metaverse is a notion that is still in its infancy but has the potential to develop into a virtual setting that is similar to social life in the real world. The concept itself is not new, though. In his 1992 book "Snow Crash," which describes a virtual reality environment where people work, play, and shop, Neal Stephenson first used the word "metaverse."²

The Metaverse is a realm parallel to the real world where individuals can have a digital life. It is a 3D version of the internet that you might access through a VR interface. One can make an avatar for themselves in this area and use it to interact with other people in a variety of situations or activities. This parallel universe coexists with the physical one and is a live reality, so even when one is not using it, it keeps evolving.

While computer games like Second Life, Fortnite, Roblox, and others may already include these aspects of continued play even when a person is not signed in, images of the metaverse imply that it will be much larger than existing stand-alone games. According to Meta, "3D places in the metaverse will enable a person to socialize, educate, collaborate, and play in ways that go beyond what we can envision."³

The blockchain technology that has made NFTs viable is one of the things that makes the metaverse a hot issue in the tech world. The ownership of virtual goods like digital art and real estate is made possible by the metaverse, which has the potential to develop into a significant market for NFTs. Sales of all NFTs reached \$40 billion in 2021 and are on pace to surpass that amount in 2022 after reaching \$37 billion as of the first week in May.⁴

It's still not clear if there will be one metaverse or many. Microsoft, Alphabet, Amazon, Nvidia, and other corporations, in addition to Meta, are investing in the concept of a metaverse. It remains to be seen if various metaverses will cooperate and allow you to navigate between them using your avatar, or if one metaverse will dominate and become the main augmented virtual environment.

Creation within the Metaverse

The various components that make up the Metaverse are made using computer programs and software to develop virtual worlds. Among these are structures, markets, or even avatars. However, because these creations are regarded as graphical user interfaces, the protection afforded to them may be different from the copyright protection granted to software. In a ruling from the ECJ, the court declared that even while these works cannot be protected by copyright as computer programs because they are not deemed to be computer programs, they can be protected by copyright because the interface represents the author's original intellectual labour.⁵

One of the unresolved issues around ownership of the Metaverse's components comes up at this point. Ownership

³Ibid.

⁴Ibid.

⁵ "Intellectual Property in the Metaverse. Episode IV: Copyright", *European Commission*, available at: https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/intellectual-property-metaverse-episode-iv-copyright-2022-06-30_en (Last Visited on 30th August, 2022).

¹ShawaizNisar, "India: IP Protection in the Metaverse", *Mondaq*, available at: <https://www.mondaq.com/india/trademark/1173882/ip-protection-in-the-metaverse> (Last Visited on 30th August, 2022).

² Intellectual property rights in the metaverse, available at: <https://www.redpoints.com/blog/metaverse-intellectual-property/> (Last Visited on 30th August, 2022).

of the software does not entail ownership of any features made possible by the use of computer programs. One can distinguish between:

- Open metaverses that allow users to add new features. In this way, the organization in charge of building that Metaverse will lay the groundwork before integrating a program that would enable users to generate new elements. In these situations, the terms and conditions may call for a mandatory license to be granted to the owner of the metaverse for any user-created elements.⁶
- Closed metaverses, where users are unable to add new elements. In these circumstances, the ownership relates to the Metaverse's corporate owner.⁷

Legal Issues with Metaverse

Like any revolutionary technological advancement, the metaverse will provide new and challenging legal challenges. The difficulties in law and regulation will expand and change alongside the metaverse's useful applications as technology advances. The metaverse is created to be highly interwoven, seamless, and unanchored in physical location, further complicating an already intricate field of play. Practitioners will need to navigate questions of jurisdiction, territoriality, and conflicts of laws for each of the legal issues covered below; none of these issues have been satisfactorily resolved for the current internet, much less fully developed virtual worlds with an even higher level of interaction and user immersion.⁸

- **Data Security and Privacy:** The protection of one's data and privacy in the digital realm will be among the most important legal challenges that platform owners will face. The fact that digital corporations, which are under increased scrutiny from both users and regulators, are aware of these concerns is not surprising. However, the data that is stored in the metaverse will become an order of magnitude more valuable than it already is, and technology will become increasingly interwoven into a variety of facets of users' life. This emerging technology will put currently applicable rules to the test and put even more pressure on regulatory bodies to adopt policies that are on par with the level of sophistication of the underlying technology. In addition, interoperability standards will be necessary for a singular metaverse if it is administered by several entities, whereas these standards will not be necessary for siloed or divergent metaverses. Given the vulnerabilities that are introduced when data is ported from one application to another, user information will be particularly vulnerable to exploitation. Platform operators will need extensive agreements to govern data transfers, information security standards, and responsibility for compliance.⁹

The emergence of the metaverse may prompt increased examination and action from antitrust enforcers. This is in addition to the enormous antitrust scrutiny that major technology corporations are already undergoing around the world, as well as the expanding legislation.

Standardization within an industry is necessary for the successful implementation of interoperability between different platforms, which is generally acknowledged to be an important aspect of the metaverse. Even though antitrust law does, in principle, allow organizations to work together to produce pro-competitive technical certifications, such as standards that increase interoperability, the process of setting standards can nonetheless give rise to antitrust problems. Cooperation agreements and industry standards run the risk of restricting output and can violate antitrust laws if they are not sufficiently tailored to meet the pro-competitive purpose for which they were created. This is in addition to concerns regarding the fairness of the process by which standards are set. As big technology corporations work toward the goal of constructing the metaverse's underlying infrastructure, they could run into allegations of antitrust violations as well as increased scrutiny from antitrust regulators and lawmakers.¹⁰

- **IP:** Concerns pertaining to the ownership of intellectual property are also quite pertinent. For instance, if a particular piece of work in the metaverse is the product of a decentralized collaborative process that was carried out by users hiding behind avatars, it may be more challenging to ascertain the identities of the individuals who are responsible for creating the work. Because of this uncertainty, the interpretation of fair use by the courts may likewise shift. In the meanwhile, trademark attorneys are focusing on concerns such as who should be held accountable when the identity of the infringer is unknown, how trademark dilution might occur in the metaverse, and whether digital assets should qualify as "goods" for the purposes of trademark laws. Concerns about infringements of intellectual property have already begun to surface in the fashion and luxury goods industries. In January 2022, the French luxury fashion house Hermès filed a lawsuit against the creator of a Non-Fungible Token (NFT), Mason Rothschild. Rothschild marketed a line of digital assets called "Metabirkins," which are digital duplications of the Birkin bag that was created by Hermès and sell for tens of thousands of dollars or more, with prices even higher on the resale market. Hermès wanted to stop Rothschild from marketing the Hermès accused the company of infringing on its trademark and of using the Birkin brand in a way that was misleading.¹¹
- **Fintech:** There will be an increase in the number of legal challenges in the metaverse that are associated with fintech, particularly as an increasing number of businesses offer digital assets and services for sale. The purchase and sale of virtual products now takes place using cryptocurrencies and other forms of digital assets, and it is possible that these transactions will eventually be facilitated by the same blockchain technology that enable the basic interoperability functions of the metaverse. In the metaverse, brands are able to distribute digital "goods" either by selling the same good to a large number of users (like branded pairs of sneakers), or by selling the rights or indicia of ownership to particular goods, such as a one-of-a-kind work of art. Those that

⁶*Ibid.*

⁷*Ibid.*

⁸ "THE METAVERSE: WHAT ARE THE LEGAL IMPLICATIONS?", Clifford Chance, Feb, 2022.

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*

choose the latter option can buy such products as an investment or keep them for their own collection, even displaying them in a virtual setting if they so choose (e.g., by "hanging" them in the living room of their virtual "summer home"). Using a procedure that is analogous to the one used to verify the value of the cryptocurrency itself, the originality of the work of art might be validated on the blockchain through the use of NFTs. Concerning the appropriate verification of ownership, as well as the potential for infringement or conversion of real and verified transactions, legal concerns will undoubtedly arise at some point. Using bitcoin as a form of cash to acquire digital goods may become more difficult for customers in certain regions if the cryptocurrency is regulated in the same manner as a financial instrument or security, which is becoming an increasingly plausible scenario in certain of these regions. It is conceivable that operators of platforms on which digital assets are held will be subject to a duty of care to safeguard the security of those digital assets as the number of individuals who own digital assets increases.¹²

IP and Metaverse

When it comes to ensuring the safety of intellectual property in a digital setting, the Digital Millennium Copyright Act, which was passed into law in the United States in 1998, has proven to be an indispensable component of the defence system. This copyright law update was an absolute necessity. It makes it possible for digital enterprises to send "take-down" notices in accordance with the DMCA. When one individual is suspected of infringing against the intellectual property rights of another, these notices provide a means for the intellectual property rights to be enforced. As a consequence of this, they are an instrument that can be used to assist in the protection of the assets of another individual or business. Applications for trademarks that are pertinent to the sale of products and services within the metaverse are being submitted by large firms to the United States Trademark and Patent Office (US Trademark and Patent Office). It is abundantly evident that brands are looking for new business prospects and methods to discover how they may increase their brand's reach in the metaverse. As a result of the fact that users can purchase and sell goods, services, and even real estate in the metaverse, problems have been raised regarding the manner in which owners of intellectual property rights can protect their marks against intellectual property thieves in the online world.¹³

- Copyright: The original works of a creator that have been published in any physical medium are safeguarded by copyrights. Copyright protection can be applied to written works, musical compositions, still photographs, moving pictures, and videos in the metaverse.

In the process of addressing violations of copyright, rights holders are going to face a number of obstacles. It is possible that many years will pass before the implementation of a clear takedown structure for copyright breaches in the metaverse. Furthermore, regulations or rules that are inconsistent across the

various platforms that have a metaverse may require you to continuously adjust licensing agreements of the products associated with your brand. This is likely to result in a significant amount of frustration as one adapts to each platform in turn.¹⁴

This is also true when figuring out how much money to charge for using copyrighted works depending on the number of subscribers or views. It's possible that different platforms inside the metaverse will have varying usage regulations, which will only make tracking usage more difficult.

- Trademark: Customers are able to more easily determine the origin of a good or service with the assistance of an identifying sign or collection of signs known as a trademark. Words, letters, symbols, graphics, and other components that can be used to identify a corporation can all be used as trademarks. Obtaining a trademark for a virtual good or service can be done through the USPTO.

Companies who have successfully branded their wares and services in the "real world" ought to give some thought to registering such marks in the "metaverse" as well. Consider brick-and-mortar establishments that sell virtual items as well as online entertainment services that are intended for use in virtual worlds. By registering their trademarks, owners of brands can prevent unauthorized use of their brands by third parties despite the fact that practically every physical object can be converted into a digital good.¹⁵

Similar to the challenges that rights holders have when attempting to enforce their copyrights in the metaverse, it is possible that preventing trademark theft will be more challenging than it would be in the physical world. Because they are not valid on a worldwide scale, trademarks have to be registered in each country where they are used. It is not apparent to what extent rights holders will be protected from potential infringements in the digital world by previously registered trademarks in the event that the metaverse blends together platforms from different categories.

If a company's owners want to promote their brands in the metaverse, they would be well-advised to work with a brand protection service such as Red Points. This type of service has the capability to scan the internet for possible trademark infringements and can automatically shut them down before they cause damage to a company's brand reputation or revenue. Business owners and holders of intellectual property rights who want to promote their brands in the metaverse.

- Patent: Patents prevent others from copying new ideas and making a profit off of them by preventing others from recreating designs, techniques, or utility kinds. In contrast to copyrights, which provide protection to any creative work that has been generated, patents call for

¹²Ibid.

¹³Supra note 5.

¹⁴Ibid.

¹⁵Ibid.

formal registration in order to provide protection to a particular innovation.¹⁶

Improving the hardware that powers the metaverse will be absolutely necessary in order to successfully merge virtual reality with the physical world. This encompasses augmented reality (AR) and virtual reality (VR) technology, such as VR headsets, haptic gloves, cameras, and scanning sensors. It is likely that an increase in patent applications that are relevant to the metaverse will occur as a result of the desire for better hardware.

Managing IP in Metaverse

In its current stage of development, the concept of a metaverse is being developed on several different platforms, each of which is owned by a centralized entity. This may change in the future so that the metaverse is an interoperable, decentralized digital world in which users are free to move about. Because of this, companies who wish to do business in the metaverse need to establish an IP licence agreement with the provider of the platform. If a brand creates a digital fashion item for a metaverse platform, the brand should ensure that it has full intellectual property rights for future use in the event that the brand decides, for example, to transfer that item to another platform. In this scenario, the brand would need to have full IP rights.

Another concern that brand owners should place their attention on is ensuring the product's legitimacy while also safeguarding their intellectual property from being infringed upon digitally. Despite the fact that NFTs have the potential to serve as digital certificates that provide evidence of ownership, a significant number of authors have been experiencing difficulties with NFT infringements across digital platforms. Watching our webinar on NFT infractions and how to deal with them is highly recommended if you wish to acquire additional information regarding this subject.

When it comes to protecting their marks in traditional e-commerce, brands and owners of intellectual property rights can rely on a well-developed legal framework. On the other hand, the legal circumstances for intellectual property (IP) in the metaverse are still in the process of development. However, owners of brands should put their attention on tried-and-true methods of guarding and enforcing their intellectual property (IP), as a method of IP that is ineffective in the actual world is likely to be ineffective in the metaverse as well.

It is important for companies to investigate the possibility of submitting intellectual property registrations for virtual world apps since doing so can protect a company's ability to sell products and services in the metaverse.

2. Conclusion

The growth of the Metaverse presents a number of exciting opportunities for the field of intellectual property. The Metaverse will usher in a plethora of fresh and cutting-edge inventions, including but not limited to technologies linked to AR and VR, virtual and cutting-edge trademark goods and

services, copyrightable software and games, industry secrets, and many others. As was mentioned previously, the same thing will be subject to newer and more terrible infringements, which will require more advanced processes in order to rectify them. When it comes to protecting trade secrets, the measures that are currently in use, such as having individuals sign non-disclosure agreements or restricting access through the use of biometric technologies, are not adequate.

There are issues that face not only the law governing intellectual property but also those who hold IPRs. On the other hand, this presents a chance for intellectual property law to advance and adapt so that it can continue to keep pace with advances in technology. Taking use of these brand-new possibilities and integrating oneself into the functioning of the Metaverse system will become increasingly important, not to mention incredibly lucrative.

¹⁶*Ibid.*