

THE METAVERSE: A VIRTUAL REALITY WORLD (WHERE THE SLOPES ARE REAL SLIPPERY)

Posted on March 10, 2023

Category: [CNPupdates](#)

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Date Published: 10 March 2023

Authors: Quek Li Fei and David Ho



1. Introduction

Where on earth is the “Metaverse”? The Metaverse is in fact, not found on Earth.

What is the Metaverse? The coining of the term “Metaverse” has been ascribed to Neil Stephenson in his novel “Snow Crash” published in 1992, wherein the term “Metaverse” is generally considered as a “place” where virtual reality melds with augmented reality and physical (3D reality) on the internet. The term “virtual reality” was used by Antonin Artaud, the French poet and playwright, in his collection of works “The Theatre and its Double”, published in 1938. Stephenson’s “Metaverse” was an online world where people could use digital avatars to represent themselves, while escaping from a dystopian state.

As in anything created by man, the “Metaverse” has both positive and negative aspects to its almost infinite potential uses. This article provides a brief insight to some of its major functionalities and applications (use-cases) and a short summary of some of the legal and potential legal issues arising from using the Metaverse, as a creator, host or participant.

2. How the Metaverse Works

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Mathew Ball, who was previously the Head of Strategy at Amazon Studios and now is CEO of Epyllion Co and occasional contributor at “The Economist”, provides the following list of observations/attributes of the Metaverse’s existence through the current Web 2.0 technology of internet: “persistence; synchronous and live interactions; the capacity for as many concurrent users as the users demand; a stable, functioning economy; the incorporation of both digital and physical worlds as well as operating on both open and closed platforms; largely interoperable; and be “populated by “content” and “experiences” created and operated by an incredibly wide range of contributors.” This means that the technical concept of the Metaverse appears to span halfway between “Web 2.0” and “Web 3.0”, wherein the ownership of the data is shared between the users and the platform owners but the code is not entirely open. For instance, users of the “Roblox” and “Minecraft” programs are able to create their own universes and characters/avatars but these are limited to an extent at which the coding of the programs and applications would allow.

3. Some risks and some legal issues

When a user interacts with others via their respective avatars in any virtual world in the Metaverse, transactions occur via millions of lines of coding. These transactions generally operate by way of “smart contracts” and, albeit possessing predetermined functions, legal issues have arisen which affect all parties involved in the Metaverse and its propagation, including platform providers and owners, content creators, hardware and software suppliers, users, sellers (including advertisers) and consumers.

Ideally, the governance of the Metaverse should dovetail with relevant domestic laws governing all the real-world facing aspects of the Metaverse. Transactions can be executed via program codes such as “smart contracts” that can run on the blockchain in a predetermined way, controlling the transfer of digital currencies or assets between parties.

The transaction of Non-Fungible Tokens (or “NFTs”) is a striking application of the concept of assets being offered for sale in the Metaverse. Various international brands (including Nike, Louis Vuitton, Pepsi, Time Magazine, Budweiser, McLaren, Australian Open and many others) have created NFTs that appear as “property” (including even virtual world real estate, objects, items or luxury clothing and accessories) in virtual reality to fuel the acquisitive appetite for luxury items of users populating the Metaverse to flaunt their wealth. Users can enter the virtual world *aka* the Metaverse as avatars and interact with each other via buy and/or sell transactions. These transactions concern the exchange of digital tokens (which are non-fiat in nature) and each country would typically have the jurisdiction to pass laws and regulate the use of such digital tokens, and to determine whether they constitute “capital markets products”, “securities” or “digital payment tokens”. Arising from such transactions that occur frequently in the Metaverse, are legal issues which can include consumer rights for purchasers, seller’s liability for sale of such “assets” and items, including representations and warranties, intellectual property rights and also the extent to which such assets and items may be “seized” as “assets” of a user who owes money to creditors (including judgement creditors) in the real world.

A significant legal issue that can arise from disputes (and ensuing litigation) on matters arising in the

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Metaverse would be the blurring of the lines that define a cross-border transaction. If the user accesses the Metaverse via a VPN function, at which geographical point of the transaction should the law focus on, in order to resolve the dispute? This is important because it may very well affect the chances of making a *forum non conveniens* application in the event of litigation. The aforesaid “geographical point” or “gantry point” is important because in the case of *CLM v CLN and others*, the High Court ruled that cryptocurrency assets can be affixed with proprietary rights and can thus be protected via a proprietary injunction. One of the main reasons was because the digital wallet that was used to trade on the cryptocurrency exchange in Singapore was viewed as a gantry point which affirmed the illegality of the defendants’ actions. If none of the stolen cryptocurrency asset was transacted on the cryptocurrency exchange in Singapore, would the Court still be able to link the illegality of the defendants’ actions to the digital assets in question? What if the cryptocurrency assets were immediately transferred off-site onto a paper wallet, which has its public and private keys written on it and the whereabouts of which are unknown, will the result still remain similar without the Court being able to ascertain any point of the digital assets’ footprint?

A second legal issue would be the infringement of Intellectual Property rights. Metaverses of today are still just applications and programs that, however realistically constructed, may still fall short of the much touted (and hyped to the sky) promises of the Metaverse in its absolute form. A significant portion of its appeal depends on its likeliness to elements of reality. This can then lead to the digital representation of persons, objects, and environments, without the permission of their true owners. According to the Copyright Act 2021, a computer program is legally considered a form of a “literary work”. Flowing from which, several points of defence may be made. For instance, it may be theoretically possible to argue that the representation is incidental; or it can be found in public places; or the representation was made for the purposes of “computational data analysis”. However, in view of these exceptions, to argue that these representations may fall distinctly under them, is to place the cart before the horse. This is because, in the context of Singapore’s legal system, there are no reported cases on the violation of the Copyright Act within a “Metaverse”, as of writing. Since no precedents have been ruled under this jurisdiction, there are just too many permutations for us to render a significantly accurate speculation.

A third legal issue can arguably be an infringement of one’s privacy. Imagine the following: when you put on the Virtual-Reality (VR) headset or use the webcam to access the Metaverse, the cameras from the VR headset and the webcam will, in the name of machine learning purposes, collect the immersive data of your entire setting. This can include what you might have in your bedroom, how many times you take a break, what you do in your bedroom during breaks. This is foreseeably potentially unduly intrusive of your privacy. While the Personal Data Protection Act may provide a certain level of protection in this regard, can platform owners and the relevant Big Tech companies really be trusted to then not benefit from such information laterally? Even though users may have consented to their data being collected for a reasonable use, how certain can they be that platform owners will exercise a fair and reasonable control over these data? An example of users not having absolute control over their data is exemplified through the newsworthy incident of Australian artist Thea-Mai’s Instagram account with the handle “@metaverse” being temporary deleted after “Meta” was revealed by Zuckerberg.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

As we embark on the journey towards a seamless interoperability where users can access their avatars and engage in one common economy across any platform on any system, another potential legal issue would be the question of who is to be held liable if and when things go wrong. Without even considering where the users are accessing the Metaverse from, can one bring an action against another for distress and/or alarm under the Protection from Harassment Act because another user's avatar has been constantly stalking the former's avatar at a virtual café and has subsequently made lewd comments in retort after being rejected at his or her invitation to a virtual coffee date? Should the platform owner of the Metaverse be vicariously liable for the actions of the users against each other simply because one of them buys a plane (digital) and flies it a couple of inches above another user's property (digital) consistently, thereby preventing a reasonable enjoyment of the latter's purchase within the Metaverse itself?

4. Conclusion

The creative (and still developing) nature of the Metaverse coupled with its inherent attraction of anonymity and escapism has brought paradoxical consequences for users. On one hand, it allows users to dive into a virtual-reality world, to explore, interact and enjoy experiences which may be unattainable in reality; yet such perceived benefits and enjoyment are beset with issues including legal issues inherent in and arising from the nature of the Metaverse and the current uses to which it has been put. Look out for the next instalment in this series of articles: Part (2) The Metaverse, in which we delve a little more into the Metaverse. More detailed discussion on the possible and resulting legal issues shall be explored.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.