

CONTINUING LEGAL EDUCATION

Legal Strategies for the Metaverse and the Evolving Media Landscape

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THE PREMIER SOURCE FOR CLE



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- Program materials are available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4002551

Objectives

This program will explore 2021's significant changes to streaming, gaming, and online social engagement with an emphasis on the rapid growth of virtual reality, augmented reality, and the implications of these emergent technologies on privacy, cybersecurity, financial transactions, commercial regulation, and contracting terms.

The presentation and interactive discussion will provide participants key takeaways including:

- Understanding the emerging metaverse, and how the components are coalescing into a new user experience
- Identifying the key legal issues for large and small enterprises doing business to support new media and to conduct transactions using existing and emerging platforms
- Describing the current and potential regulatory environment at the state, federal, and multinational level

Conceptual Reference

The future influences the present just as much as the past.

— Friedrich Nietzsche

The present has long since begun to grind to a halt.

— Alvin Toffler

The future is already here. It's just not evenly distributed...

— William Gibson

What is the Metaverse?

- The metaverse has been used in an informal manner for the past three decades.
- Aspects of a metaverse are essential to world-building games like Roblox, Minecraft, and Fortnite, to massive multiplayer online roleplaying games like Halo, Final Fantasy, and World of Warcraft, and to virtual worlds like Second Life.
- These online environments allow users to interact with each other, to engage with computer generated characters, and to play or perform activities using elements within the virtual environment.
- To foster the interaction among participants, each participant is represented by an avatar. The avatars may be designed to resemble the real-world user, to be highly fanciful, or to be anything in-between.
- As these examples suggest, there are already metaverses available for the public, and “the metaverse” actually reflects a multiverse composed of different metaverses. The term metaverse is generally used to cover the multitude of metaverses.

Possible Attributes of the Metaverse

Characteristics of the metaverse



Boundless

There are no barriers between real and digital, and the metaverse is endless



Decentralized

No single entity has control over the metaverse. All users have individual agency.



Persistent

The metaverse is always active and can't be reset or unplugged



Economic system

Digital currencies help power fully functioning virtual economies



Immersive

Users can achieve a realistic sensory experience with extended reality (XR) tools



Social experiences

The metaverse creates strong social links with other users and AI virtual beings, creating events meant to be shared together

Possible Attributes of the Metaverse

- Matthew Ball has offered seven attributes that describe the metaverse as well as the current internet:
 - Persistence – always on and available;
 - Synchronous and live interactions;
 - Functionally infinite capacity for as many concurrent users as the users demand;
 - A stable, functioning economy;
 - Incorporation of both digital and physical worlds
 - Operating on both open and closed platforms;
 - Largely interoperable;
 - Populated by content and “experiences” created and operated by an incredibly wide range of contributors.

Identified, Anonymous, or Pseudonymous?



The “Enterprise Metaverse” requires verified identity for many of the interactions and transactions

- Banking and finance
- Employment and professional services (gig work)
- Education and licensure
- Health and telemedicine
- Personal (dating)



The Enterprise Metaverse requires HIPAA quality privacy to create public trust in these activities



Much of the Web3 rhetoric is anonymity-based activities, which are at odds with regulations

Why Does the Metaverse Matter Now?

- Millions of users in a generational shift
 - Roblox, Sims, Minecraft, Fortnite, etc. have transcended TV, Film, Theatre, Books, and Music
 - Bitmoji images are extremely popular and driving usage
- Creates a better integration of home/work environments than Zoom, etc. – an environment likely to stay
- Can potentially redefine race, gender, and ethnicity, since “[o]n the Internet, nobody knows you're a dog.”
- Provides a platform for Web3, DeFi, DAOs, FNTs, and Crypto

What is Web3 and How does it fit in?

- Although the Internet has been in existence since the 1970s, the modern World Wide Web or Web 1.0 was tied directly to the launch of the graphical user interface beginning with the Mozilla (Netscape) web browser in 1994.
 - In many ways, the Internet of the 1990s was a digital publisher and library, dominated by content owners digitizing, organizing, and pushing out content to the public in a one-to-many model.
- Web 2.0 was about interactivity and user generated content. “Web 2.0 refers to worldwide websites which highlight user-generated content, usability, and interoperability for end users. Web 2.0 is also called the participative social web.”
 - Web 2.0 shifted from its participatory roots into a centralized, algorithmically mediated new media marketplace. The dominance of the FAANG companies—Facebook, Apple, Amazon, Netflix, and Google—largely undermine the ethos of Web 2.0 as being about individual participation

What is Web3 and How does it fit in?

- Web3, its evangelists predict, will use the power of digital property to empower the individual.
- “For Web3, the internet is shifting from ad-based business models to commerce-based business models. ... As the internet evolves, it becomes more participatory. People move from passive consumers to active creators.”
- Gavin Wood, founder of the Web3 Foundation, has been quoted as explaining, “Web3 is actually much more of a larger sociopolitical movement that is moving away from arbitrary authorities into a much more rationally based liberal model.

Web3 Ecosystem – Nirvana or Nightmare

- Artificial Intelligence enabled and empowered
- Peer-to-peer networks
- Blockchains used for cryptocurrencies (fungible tokens) and NFTs (nonfungible tokens)
- Smart Contracts – self-executing interactions triggered by pre-programmed orders (digital vending machines or automated escrow)
- Decentralized finance (DeFi)
- Distributed Autonomous Organizations (DAOs)
- Synthetic Media
- Games and Virtual Worlds

The Battle for Web3 and the Metaverse

Web3 evangelists want a decentralized metaverse, but these corporations have a different agenda:

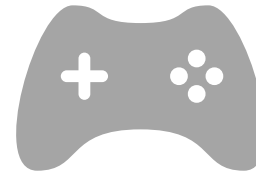
- Microsoft – HoloLens, Teams, Office, Minecraft, Bob, Xbox, and the “Enterprise Metaverse” ... and Activision acquisition
- Meta (Facebook) – Oculus Rift, Gaming, Ad Based
- Nvidia – Omniverse platform and suite of synthetic media tools to build metaverses
- Google – Google Glasses 2.0 (purchased North), AR computing
- Amazon – AWS services, Prime Video
- Epic Games – Fortnite and Unreal Engine
- Niantic – AR games (Pokemon Go, Ingress, Wizards Unite)
- Roblox
- Tencent – China’s leading video game firm and stakeholder in Epic Games and Blizzard Activision

The Problem of Bleed



Videogame Law

- Contracts, including pre-existing rights issues
- Intellectual Property
- Publicity Rights in Performers
- Maybe publicity rights if users make selfies and avatars



Videogame Bleed

- In-game money, tokens, or assets become resalable outside the game, triggering money transfer laws
- Games have payouts of value transforming them into regulated gambling



Metaverse Bleed



- What happens when a game becomes a
 - University?
 - or a software company?
 - or Doctor's Office?
- Anonymity becomes required identity verification, heightened privacy and security requirements, state and federal compliance
- In-game rewards become financial transactions
 - Regulation is territorial by country and sometimes by state; a ubiquitous metaverse cannot meet all 193 UN Member countries' laws
- The BYOD problem transforms into a BYOW problem
 - Malicious code in avatars
 - Data exfiltration
- Every regulator wants jurisdiction over everything, everywhere

The “Law” of the Metaverse

Sources of Law

- Nation-State Authority
- Corporate Oversight
- Participatory Governance

Driving Societal Levers

- Economic Opportunity
- Entertainment
- Community
- International Concerns
- Lack of Predictability
- Digital Divides – economic, race, nationality, gender, age

Categories of Law

- Contracts (including EULA/ToS, B-B, B-C, and impact on pre-existing agreements)
- Property (perhaps only by analogy)
- Constitutional Issues (Commerce Clause First Amendment, Fourth Amendment, Tenth Amendment, Eleventh Amendment)
- Electronic Communications Privacy Act (ECPA); Title III
- IP (Copyright, Trademark, Patent, Publicity Rights, Trade Secrets)
- Gaming Laws
- Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)
- Privacy Laws (Data Privacy; Biometrics, CFAA, etc.)
- Consumer Labeling and Trade Laws (for out-of-game transactions)

Add'l Categories of Law

- Education, Employment, and Nondiscrimination Laws (ADA, Title IX, Civil Rights Act, FCRA, etc.)
- CDA §230; DMCA §512
- Securities Laws
- Banking Laws and Currency and Foreign Transactions Reporting Act
 - Know Your Customer
 - Anti-Money Laundering
- Commodities Futures Trading
- Corporate Transparency Act
- Foreign Investor Risk Review
- Anti-Terrorism Laws
- Law of Armed Conflict

Risk Scenarios

Ginormaverse is an open, interoperable platform with social media, gaming, and fantasy features. Ginormaverse ToS waives all liability for third-party harms; reduces liability for own actions unless reckless; and caps damages to return of license fees:

1. Company using Ginormaverse is hacked when Russian ransomware attacker creates a false employee login on Ginormaverse.
 - Is Ginormaverse liable? Is the breach insurable? Can it be stopped?
2. Employer adopts an online optional office policy
 - Access is through Ginormaverse. Employee, who otherwise avoided Ginormaverse, creates an account for work and is then harassed.
 - To what extent is employer liable for harm? Which behavior created the liability?
3. Company publishes an online game using NFTs for in-game assets using Ginormaverse platform. An Iranian company sells clothes and equipment in the game.
 - Is it legal?
 - Does the answer change if it was operated by a DAO, but owners of the DAO included sanctioned individuals?

Working towards a Practical Enterprise Multiverse

- There will be many metaverses.
- Where interoperability leads to security risks or liability exposure, the risks will likely not outweigh the benefits.
- Among trusted companies using secure user identification, these will thrive.
 - Universities have great use cases and user sets
 - Large employers, who need a training platform
 - Financial institutions who wish to catch up to crypto and stay relevant
- DAOs create significant additional legal risks

Thoughts on Client Engagement

- Identify the use case for the metaverse tools to build extensions of current best practices into the metaverse
 - Employment policies on compliance, privacy, security, workers' rights etc.
 - Customer policies
- Develop collaboration (cross-licensing) agreements with similarly-situated vendors
 - The metaverse is not the internet; it isn't a protocol
 - Identify companies with shared goals
- Offer tiered services

Manage the Metaverse like Disneyland

- Near absolute control of user experience in the park
- Legal and operational control of the properties adjacent to the park, including additional properties
- Regulatory influence over municipality
- Strategies to limit often predatory landowners adjacent to park properties (which is why company owns buffer businesses)





Questions

All attendees can submit questions via the Q&A feature in the webinar interface