

Kluwer Copyright Blog

Global Digital Encounter 21: The Metaverse as a Challenge to Classical IP

Marianna Ryan (King's College London) · Tuesday, July 5th, 2022

This year we have seen an influx of educational events dedicated to everything digital. In particular, non-fungible tokens (NFTs), crypto and metaverse have dominated our infospace.

June was no exception. Last Wednesday, [Fide](#) (a legal-economic think-tank) held the latest in their series of Global Digital Encounters (GDE) – an [online panel discussion](#) focusing on the metaverse and IP with some of the leading experts in digital laws.



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Professor **Laurant Manderieux** (Bocconi University) gave an opening speech, setting the tone for the upcoming discussion, and then presented the panel of experts, which turned out to be very diverse: **Dr Andres Guadamuz** (Reader in Intellectual Property Law at the University of Sussex and the Editor in Chief of the Journal of World Intellectual Property), **Gregor Pryor** (Partner at international law firm, Reed Smith), and, assuming the role of the event's moderator, **Dr Michaela MacDonald** (Lecturer at the School of Electronic Engineering and Computer Science, Queen Mary University of London, and video games law scholar).

Panel discussion

The first topic up for discussion by the panel was the actual definition of the metaverse. It is clear that there are many definitions and it was generally difficult to settle on one for something that had been “hyped” so much, noted Dr Guadamuz. However, overall, we can agree that metaverse means some sort of a virtual reality space. Some people see metaverse as the Oasis from “Ready Player One”, but this is not really the case. The current market figures do not support the thesis that metaverse is virtual reality (VR) *per se*. VR is currently still more of a niche. People are just not using the technology as yet. Therefore, it makes more sense to speak about metaverse in broad terms for now. We could, therefore, define metaverse as any persistent virtual space where a user

can participate by form of an avatar.

Mr Pryor added that generally people exist in the metaverse when they spend more than half of their time online. Although VR headsets themselves are still a very niche product, a virtual world is the one where users can interact and conduct activities as if they were in real world (this includes user entertainment, online shopping, etc.). So, we can say that many of us already exist in the metaverse.

On the definition of metaverse, Dr Macdonald summarised that a metaverse is an immersive ubiquitous experience, in which a user can participate from various devices, which is also interoperable and scalable. On the issue of connectivity, a very important feature of metaverse, she explained that connectivity in the metaverse means experiencing the same space together, which, at present, is not always easy to deliver.

The next question for the panel discussion was on the main players in the metaverse.

Mr Pryor quickly named the obvious big one – Meta (formerly Facebook). Other big players included: Unreal Engine, Unity, Decentraland, Sandbox, Roadblocks and even Minecraft. At present, there are multiple virtual worlds, not all of which are hyper-realistic. At the moment there are separate walled gardens and not one big metaverse.

According to Dr Guadamuz, the main metaverse companies can be divided into three groups: (1) games companies and social media giants (creating private metaverses that are closed and wall guarded); (2) open metaverse developers (providing open-source decentralised standards); and (3) independent developers with some basic funding (e.g., Web3 developers).

The discussion then turned to the role of IP law and rights in the metaverse.

Dr Macdonald expressed the view that the concept of metaverse itself is going to further exacerbate the issues we are already experiencing in other digital environments. Dr Guadamuz felt that the 2007 discussions were being reopened again. Property rights were completely dependent on the type of players in the metaverse. For example, private companies and game companies (with the exception of Second Life) own everything and bind their users with end-user licence agreements (EULAs). Then, there is a second version of property ownership, as seen in the Second Life – virtual goods created by users, which belong to them. The third approach offered by Web3, blockchain and NFTs is where the users own everything they create and are able to licence and trade their virtual goods.

The concept of property ownership in the metaverse coexisting with traditional models was addressed by Mr Pryor, who highlighted the acute problem of ownership of NFTs. If NFTs continue to be as popular as they currently are the regulators will certainly interfere and try to protect users. NFTs could potentially enable ownership but this is yet to be seen.

The next topic in the discussion was user protection in the metaverse.

Dr Guadamuz thought that the scope of protection in the metaverse was going to be the same as the protections that already exist, which are solid and tested. Courts understand the environment. Companies should start thinking about protecting their brands in the metaverse. For instance, purchasing blockchain domain names now to avoid cybersquatting in the future.

The panel considered whether tech solutions could replace or complement the current legal norms and to what extent. Using the example of NFTs, how can the technology be used meaningfully and it be made clear that it does not solve problems of digital ownership and digital exhaustion? Mr Pryor was sceptical about the legislative initiatives and said that change needed to come from commerce, not the legislators. Dr Guadamuz highlighted that there was currently not a lot of regulation and what existed was not geared well. Current technological solutions include smart contracts and [decentralised autonomous organisations \(DAOs\)](#) but they arguably do not provide an operational tool for the metaverse. DAOs have a lot of inherent issues. There are also problems with [smart contracts](#) – contract theft, errors in the code etc. Companies are, therefore, relying more on the old law. Although NFTs and smart contracts have a future, we have to recognise there are certain limits to them.

Dr Macdonald sought the other panellists' opinions with regard to people's ability to learn from past experiences and mistakes in terms of developing digital spaces in a way that empowers users and does not grant too much power to private companies. Both panellists were hopeful and optimistic. Mr Pryor's view was that regulation of the metaverse in the current realities was not going to be such a quantum leap as it was with the Second Life, which would make the implementation of new laws much easier. Dr Guadamuz added that companies already had some form of experience with content moderation. There has been a lot of investment from the global tech companies in content moderation. Although the current technological solutions are not perfect, they do work, and content moderation is going to be one of the biggest issues in the metaverse.

Questions from the audience

The audience raised many interesting questions, covering topics such as trademarks for virtual goods, property title in the blockchain, and IP infringement in the context of NFTs in light of the most recent [High Court decision](#) that recognised NFTs as property.

Particularly intriguing was a discussion around the conflict between the digital space and the real world. Mr Pryor explained that in the US there was currently a lot of fuss as to whether one avatar assaulting another avatar constituted an assault of a real-life person. Also, questions like “*Can your avatar be murdered?*” are starting to emerge and there will be more of these.

Dr Guadamuz likened EULAs to a constitution of the metaverse space. In Second Life there was an attempt to bring external property laws into that metaverse. Those included property rights over the virtual plots of land in the Second Life. At the moment, private companies can do as they please and be the Lords of their own digital countries.

The same question has been asked for the video games industry, noted Dr Macdonald – the maker of the game effectively makes the rules and there is no remedy in the real world. Now we are living through the next level of immersive experience. The argument that everything takes place in a fantasy land not connected to the real world does not work any longer. We shall see more cases on platform liability, as platforms will have to comply with the users' property ownership claims.

Conclusion

The panel's discussion concluded with the final remarks that there would be more encounters with the metaverse in future. The topic is, indeed, so wide that an hour-long discussion, although very fruitful, can barely even scratch its surface.

Additional reading prepared by the speakers can be found here: <https://thinkfide.com/global-digital-encounters/references-global-digital-encounters/>

The Speakers' bios can be found here: <https://thinkfide.com/global-digital-encounters/gde-21-the-metaverse-as-a-challenge-to-classical-ip/>

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