

THE METAVERSE AS A CHALLENGE TO CLASSICAL IP

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Speakers:

- **Dr. Andres GUADAMUZ**, Reader in Intellectual Property Law at the University of Sussex
- **Greg PRYOR**, Partner, Partner at the international law firm, Reed Smith. He is co-chair of the firm's global Entertainment and Media Industry Group.

Moderator: Dr. Michaela MacDonald, Lecturer at the School of Electronic Engineering and Computer Science, Queen Mary University of London.

OBJECTIVES

During, and further to the COVID Crisis, the Metaverse steadily developed, and its role became even more central for the Business World. Its massive use connected to key economic sectors (Art, Retail, Innovative Business) brings legal consequences, for Classical IP, and offers real challenges in particular to Trademark Law, Copyright and Neighboring Rights Law and the Patent world. New business models are in urgent need for clarity on the interaction of the metaverse and NFTs with classical IP. Which meanings might be expected from this evolution / revolution?

REPORT

Professor Laurent MANDERIEUX started with welcome words, presented the conference's distinguished guests, and briefly described why and how the metaverse may require an evolution of the classical IP world, in particular in the fields of trademark, copyright and patent law and practice. **JAVIER FERNANDEZ-LASQUETTY** then noted the exceptional nature of this "hot topic" that is enjoying the "hype". It is therefore important to understand the Metaverse through the context of intellectual property law.

Moderator **Michaela MACDONALD** introduced the conference by emphasizing an important element: being connected. Experiencing a space together in real time, no matter where we come from.

1 - HOW CAN WE DEFINE THE CONCEPT OF METAVERSE?

Speaker **Gregor PRYOR** started by pointing out the many conflicting views on what constitutes the Metaverse. The most compelling of all could be "when a person spends more than half of their life looking at the screen". Digital existence is accurate and real because so many people have already existed in the Metaverse. The Metaverse is going to be definitely a virtual world where users are allowed to interact and conduct activities, just as if they were in



the real world, which includes entertainment, commerce, meeting, community, and all those things we might enjoy in our everyday life.

Moderator **Michaela MACDONALD** recapped the common characteristics attached to the Metaverse, such as a realistic, immersive, ubiquitous experience available from all kinds of digital devices (wearables, computers, headsets, VR, AR, extended reality, etc.). With the special ability to be interoperable. Ideally, it should be a unique space, where we seamlessly move from one area to another, also scalable, so that the infrastructure must support and deliver an immersive experience, with significant technical challenges.

2 - BECAUSE OF THE DIFFERENT VERSIONS OF THE METAVERSE, INHERENT TO THOSE WHO BUILD, SELL OR USE IT, WHO ARE THE KEY PLAYERS?

Without hesitation, Speaker **Gregor PRYOR** mentioned Meta, as a major actor. In referring to the Reed Smith Guide to the Metaverse (May 2021) which further discusses these issues, the company is investing a tremendous amount of money to win this gold rush. Other players are also notable for their interest and projects in this field: Epic Games through its video game "Fortnite", its software "Unreal Engine", Sandbox which is not yet launched but has benefited from huge investments, Roblox or Minecraft for gamer's entertainment. However, offering a virtual world does not always mean proposing realistic content, like in real life. Therefore, interoperability would represent the Holy Grail, but for now we

have separate wall gardens.

Speaker **Andres GUADAMUZ**, meanwhile, adopted a systematized classification of key players which have three different visions:

The first group of key players represents the companies' private Metaverses that are closed, considered as walled gardens. They probably function as a platform, with a three-dimensional structure, like Meta.

The second group of key players stands for the "Open Metaverse Developers", like Odyssey in the Netherlands which attempt to build not the actual Metaverse, but open-source standards. This involves, for example, setting up standards, design tools and thus contributing to the Metaverse's collection.

And the third group of key players, called "Web 3 Developers", is looking to extend the Metaverse to Blockchain and NFTs. Ownership could be transferred using NFTs. It is still necessary to understand the liability of this.

The moderator, **Michaela MACDONALD**, emphasized that the definition or vision of the Metaverse depends on who is implementing it. Indeed, users and companies usually do not share the same idea. The concept of



the Metaverse will exacerbate the problems of digital ownership, interoperability, portability, that we already experience in many different digital environments, including video games.

3 - WHAT IS THE RELATIONSHIP BETWEEN THE METAVERSE AND TRADITIONAL INTELLECTUAL PROPERTY RIGHTS? IS THERE ANY WORKING VERSION OF OWNERSHIP, OF DIGITAL OWNERSHIP, THAT MIGHT RESOLVE THIS SOMEWHAT DIFFICULT RELATIONSHIP THAT WE ALREADY WITNESSING AND EXPERIENCE ON A DAILY BASIS?

Speaker **Andres GUADAMUZ** explained that for those who were in the circle of the "previous craze" (circa 2006 - 2007), we may remember the innovative discussions about ownership in Second Life, that are still relevant today. We are now experiencing 2007 all over again! Ownership may end up being completely dependent on the type of Metaverse.

In the first group, if we are thinking about the Meta's version from a private company or video games company, the property is quite easy: it belongs to the publisher, the entity who owns the servers, binds the clients with user license agreements. As a user, the only way to benefit from property rights is mostly a license agreement, which delimits what is authorized and what it is not (for instance, trading goods).

Within the second group of players in the Metaverse, Intellectual Property rights are more feasible: goods created by the users belong to them and remain in the Metaverse. Second Life was unique for these reasons.

Finally, the third group, represented by Web3, foresees that we are the owner of our creations and be able to transfer it, exchange it.

Speaker **Gregor PRYOR** replied also that we get a lot of inbound questions from clients looking to protect the shape of ownership in the digital world, "if you don't own something, someone else will steal it". So, brands are looking to protect their brands in the Metaverse meanwhile people are selling fake Gucci avatars (real example). The risks and, at the same time, the attractiveness of Blockchain/NFTs are reflected in people sale, for instance Christie's sold items for millions and millions of dollars. The value of ownership is all about the extent to which there is a right of transfer. People buy NFTs thinking they own something. Because of the opacity around the IP rights transfer and the increasing popularity of these tokens, it is almost inconceivable that regulators will not intervene. From Speaker **Gregor PRYOR's** point of view, NFTs could have utility and enable ownership potentially, but there is a way to go.

Moderator **Michaela MACDONALD**, noted that when we look at the relationship between the Metaverse and traditional modes of intellectual property protection, business-facing interactions will be fine. Most of the time, companies have the tools and



skills to ensure that their intellectual property assets are protected, as well as contracts, licensing agreements and technological safeguards:

4 - BUT WHAT ABOUT THE USERS? THE METaverse CONCEPT IS BASED ON THE IDEA OF THE USER'S CREATIVITY, ACTIVE ENGAGEMENT, INTERACTION, AND ABILITY TO CREATE IN THE ENVIRONMENT. HOW WILL CURRENT INTELLECTUAL PROPERTY RIGHTS SUPPORT THIS?

Speaker Andres GUADAMUZ proceeded by saying that the scope of protection will remain more or less the same. Brands don't need to be overhauled on the Metaverse, they already benefit from trademark protection, codes under copyrights. People should probably think about purchasing domain names on Web 3. For the companies, the protections seem strong, they're tested, there's nothing new under the sun in that regard, and we can expect more proactive actions from judges, at least with the new tools.

Moderator Michaela MACDONALD outlined that the common vision shared in this conference is the role that technology plays in supporting or complementing IPRs. These experiences, features, and functionalities within the Metaverse, integrate Blockchain and NFTs for their utility to businesses and users.

5 - DO YOU THINK THAT TECHNOLOGICAL SOLUTIONS CAN, TO SOME EXTENT, REPLACE OR BE COMPLEMENTARY TO LEGAL STANDARDS IN A CERTAIN CONTEXT? THE MEDIA HYPE, THE MISUNDERSTANDING OF NFTS,

PEOPLE WHO BELIEVE THEY HAVE BOUGHT PROPERTY AND THAT PROPERTY IS TRANSFERRED BY PURCHASING NFTS TOKENS, WHEN THAT IS NOT THE CASE. HOW CAN WE USE TECHNOLOGY IN A MEANINGFUL WAY TO BUILD METaverse WITH ALL THESE FEATURES? WHILE POINTING OUT THAT THEY OFTEN DON'T SOLVE PROBLEMS, SUCH AS THE LACK OF DIGITAL EXHAUSTION OR THE FUNCTIONAL CONCEPT OF DIGITAL OWNERSHIP.

Speaker Gregor PRYOR thought that most of the solutions to these types of problems tend to come from commerce. According to him, we are not about to see a government or legislative initiative that will succeed. Most Metaverse environments are in fact, "walled gardens", which implies two sets of rules:

The laws and regulations (for instance, copyright laws, child protections laws) which exist, and require compliance when we are a company.

On the top of these Laws, we have contractual laws that allow us to use an environment. Users, in an Epic Games setting for instance, need to respect terms and conditions that apply. When technology is combined with terms of use, buyers will quickly understand that they own something that has value within the virtual world. No doubts that Commerce will have the solution, it will



not come from legislators.

Speaker **Andres GUADAMUZ** agreed. Initially, there was not a great need for regulation, because the existing laws, as mentioned before, are well adapted. Traditional case studies are still useful. However, he remains a bit skeptical of technological solutions, especially because things like smart contracts are often presented as the best solutions, as well as governance structures such as DAOs (governed by smart contracts), which have many flaws. We are going to be ruled by the benign system of Blockchain, reminding the Speaker a famous quote: "all watched over by machines of love and grace". The reality tends to be a bit messier, as reflected in smart contracts, errors in the code that can block funds, contract theft. When things go wrong, companies that sold all this decentralization are actually going back to the "old boring law". NFTs and Smart Contracts have a future, but we need to moderate it by putting some limits on it.

6 - DO YOU THINK WE WILL BE ABLE TO LEARN FROM PAST EXPERIENCES AND MISTAKES IN TERMS OF DEVELOPING DIGITAL SPACES IN A WAY THAT GIVES USERS EQUAL POWER TO COMPANIES THAT CAN'T REGULATE THE SPACE THE WAY THEY WANT TO, AND ALLOWS POLICYMAKERS AND REGULATORS TO REALLY GRASP AND UNDERSTAND THE NATURE AND NUANCES OF THESE SPACES?

Speaker **Gregor PRYOR** was very optimistic about the future and continued by saying that we learn from the past. The best example is privacy or child protection and how these have evolved to apply easily to the

Metaverse. As Internet laws develop, they naturally apply to the Metaverse.

Speaker **Andrés GUADAMUZ** was also optimistic about regulation. Companies have learned through content moderation, for example, and it is much better than before, even if it is not perfect. The Metaverse will also have its content moderation rules.

1. QUESTIONS FROM THE AUDIENCE

1. Should owners of trademarks that are not reputed or well-known be filing new trademarks for software and related services to be protected in the Metaverse? How do you expect the relevant offices (EUIPO...) or courts to deal with the similarity of 'real goods' with the virtual version thereof?

Speaker **Gregor PRYOR** responded by saying that the specific problem is not the registration but the infringement. Companies are going to be relying on trademark agents to draft really strong and clear specifications that perhaps are quite narrow for the virtual world. It is going to be a question of relying on strong practitioners to kind of make the market easier.

Speaker **Andrés GUADAMUZ** also participated by seconding this thought and mentioning the great option for 'passing off' to shine as well.



2. What is the value of a property title ("authentication certificate" delivered via smart contract) in the Blockchain according to intellectual property law?

Speaker Andrés GUADAMUZ referred to it as the receipt of a link that gives us access to where something may be stored, may it be on a decentralized service or on a centralized one. It is worth it as someone is more willing to give it. There is not only one Blockchain; there are different Blockchains, so although it is supposed to be a trustless system, the important thing is to trust people anyway; definitely, it becomes relevant the need to trust the person that is issuing the certificate.

3. The minting of original work or brand as an NFT infringes Intellectual Property rights if you do not hold the IP right to the original work or brand?

Speaker Andrés GUADAMUZ said that it is not really simple, it is easier to make a trademark case on trademark infringement rather than a copyright one on this topic. The main reason is because it is not settled that minting something without permission is infringing copyright.

4. What do you think about NFTs being recognized as legal property by the United Kingdom High Court? Is it a promising improvement or made everything more complex?

Speaker Gregor PRYOR pointed out that it depends on whether the rest of the world follows this practice. The United Kingdom for instance, due to Brexit, is becoming more and more isolated. Sometimes a court or a

particular country takes the lead on some issue, and it is useful but it really needs some kind of resemblance of harmony. From his perspective, legislators tend to be quite forward-thinking, but only time will tell, especially in United States.

5. Are we facing a conflict between digital society law (laws that apply within the digital space) and the physical world legal system? Do we have different separate systems and a conflict between them?

Speaker Gregor PRYOR really thinks so. He set out a couple of reasons. The first one is that the Metaverse has special rules. Meta, the company, wants to put a different set of rules in the Metaverse and they can do it and put us out if we don't like it. The other interesting thing, highlighted by Speaker Gregor PRYOR, was a lot of fuss in the United States as to whether one avatar assaulting another avatar constituted an assault in the real world. There are law firms that are selling the services to help to recover the losses and damages caused in these kinds of scenarios. "Can your avatar be murdered?" is another issue that has already been raised, there is an obvious conflict there, which has only just begun.



Speaker **Andrés GUADAMUZ** agreed completely with Speaker Gregor PRYOR about the two things emerging within this context. He referred to User's License Agreements (EULAs) as a "constitution" to the virtual space which it is necessary to comply with. In Second Life, there was an attempt to try to bring external property laws into it. For instance, the property rights over the virtual pieces of land. Right now, the companies pretty much operate however they want, and have a monopoly on the rules to be respected.

Moderator **Michaela MACDONALD** also added that there will be a shift in thinking about this topic, and lots of people surely but slowly move our digital existence into whatever version is made available to them. These questions have been asked already with regards to video games, whose answers were carelessly "these are just games". So, whoever made those games, made the rules, no matter what the players thought of it. Video games have become much more than that, so now we are talking about the next level of immersive experience - Metaverse - which clearly is not just about entertainment, it is about all aspects of our lives. The fact that it is built in an imaginary universe, a fantasy world, that has no connection with the real world, is no longer important. Also, from the perspective of the digital products and services, there will be a big focus on actually delivering what has been promised. So, if Metaverse providers are talking about property, ownership, they will have to make it true and it should be then reflected in the license agreement, because otherwise this potentially would be a matter for consumer protection.

FINAL CLOSING REMARKS

Professor **Manuel DESANTES**, highlighted that, in this discussion on this extremely interesting topic, the Pandora's Box has been opened. After pointing out all the topics -i.e., definition of the Metaverse, different players, interoperability, the role of Intellectual Property in the Metaverse, etc.-, he concluded that we must devote many more encounters to the Metaverse, in the future. Nobody doubts about the exponential dimension of the Metaverse that is going to change our lives and, of course, Intellectual Property regulation.

Report written by Adèle Serio and Luz Sánchez García