

SHAKING THE GOOD OLD IP KIT: THE METAVERSE

GLOBAL DIGITAL ENCOUNTER 25,
FEBRUARY 28TH, 2023

Panelists:

- **Prof. Paul Przemyslaw POLANSKI**, Professor of Law at Kozminski University
- **Prof. Raquel XALABARDER**, Professor, Chair of Intellectual Property of the Universitat Oberta de Catalunya (UOC).
- **Dr. Ulrike TILL**, Director of the IP and Frontier Technologies Division at WIPO
- **Prof. Javier FERNÁNDEZ-LASQUETTY**, Partner at Elzaburu. Professor of Law at IE University. Academic Advisor to the Fide Foundation.

REPORT

INTRODUCTION

During, and further to the COVID Crisis, the Metaverse steadily developed, and its role became even more central to the Business World. **Professor Laurent MANDERIEUX** reminds us that the Metaverse is a challenge for society bringing more opportunities, more enjoyments, more challenges and threats. The 21st Global Digital Encounter was already fully dedicated to “The Metaverse as a Challenge to Classical IP” and got a massive audience and content success. Since there is such a growing interest in the relationship between the Metaverse and IP, and for the first time in the history of the Global Digital Encounters, the Academic Team decided to dedicate a second encounter to this topic. Thus,

our 25th Anniversary Encounter will focus on “Shaking the Good Old IP Kit: The Metaverse” with the presence as well of exceptional Colleagues.

Moderator, Prof. Javier FERNÁNDEZ-LASQUETTY started the session by asking the speakers to summarize the definition or the notion of Metaverse.



QUESTION 1: IS READY PLAYER ONE THE PROMISED LAND OF THE METAVERSE AND ONE OF THE THINGS WE CAN EXPECT FROM THE METAVERSE? IS THIS WHAT MATTHEW BALL HAS DEFINED AS A “PERSISTENT INTERCONNECTED, 3D, VIRTUAL WORLD ENVIRONMENT THAT STIMULATES A REALITY” OR COULD IT BE SOMETHING DIFFERENT WHICH IS MEANT TO CHANGE?

Dr. Ulrike TILL set the stage in motion by stating that it has been almost 30 years since Neal Stephenson introduced Metaverse in this novel [“Snow Crash”](#). The virtual world has exploded post COVID. She added that there are various applications and use cases as seen in academic institutions incorporating Metaverse to aid in teaching in Japan, airplanes using digital twins to train their pilots and Tuvalu is uploading as a first virtual state in the Metaverse as a means to guard their culture. And she ended by stating how humans always tend to overestimate the effect of technology in the short-term and always underestimate it in the long term, hence we would still have to see how things evolve in this space.

Prof. Raquel XALABARDER continued the debate by stating that she is still skeptical about this concept. She mentioned how from the current debate reminds her of the discussions around “Second Life” 20 years ago. She acknowledges that there are different attempts around video games and that numerous metaverses may successfully develop within these contexts. But the concept of “the” Metaverse, as in “the” internet, still seems unlikely because it requires a lot of interoperability and synchronization of data which is not (yet) a reality. But this does not prevent the

creation of many other functioning virtual spaces. Despite being a copyright scholar and being comfortable with the protection of intangible assets, she is amazed by how companies are investing in buying “properties” in a Metaverse and how through Blockchain technology we are creating an artificial scarcity of something which is totally intangible and, hence non-scarce by nature. In her opinion, IP tools that we currently have should serve us well also to navigate the challenges raised by these virtual intangible assets; as always, IP laws will adjust as necessary to new markets.

Prof. Paul Przemyslaw POLANSKI stated that it is not easy to define Metaverse as there are many metaverses and they may not be interoperable. Stating about the different categories of metaverses, **Prof. POLANSKI** distinguished it on:

1. **The type of access** to these virtual worlds is through a web-browser (“Second life”) or through 3D glasses (Google glass, VR) and based on these the ways of consuming the information and handling the information would be completely different.
2. **The type of technology used for storing** the information. That is, whether the information is stored on a blockchain network or old style traditional “Second Life” like metaverses, without blockchain technology. He concluded by drawing parallels with the development of the Internet., and

stated that, there were many kinds of networks in the 1970's until the TCP/IP network by Vint Cerf and Robert Kahn harmonized transmission, through the networks leading to the emergence of the Internet, as we know today. The Metaverse space is one of these internet revolutions, a similar ground where there still needs to be harmonization and until then it would be difficult to define.

Prof. Javier FERNÁNDEZ-LASQUETTY agreed on the fact that the Metaverse is a very highly competitive market where big companies (Meta), institutions, social movements or even individuals compete.

Prof. Paul Przemyslaw POLANSKI replied that indeed new players are trying to take advantage of emerging technologies, through blockchain for instance, and overturn the particularly significant influence of big and established companies.

Prof. Javier FERNÁNDEZ-LASQUETTY declared that there are still technical limitations until we get to "Ready Player One" type of Metaverse. He questioned the speakers on:

QUESTION 2: WHAT IS GOING TO BE THE NEXT PHASE IN THE DEVELOPMENT OF METAVERSE?

Dr. Ulrike TILL answered stating that right now, we are far away from "Ready Player One" like Metaverse, the technology isn't there yet. Sandbox or "Second Life" video games can seem like almost old-fashioned computer games, because we are lacking the data processing power and bandwidth to perform all these features. Continuing, **Dr. Ulrike Till** spoke about the various investments going in the Metaverse space and how at WIPO (World Intellectual Property Organisation) they are seeing big players making investments in this environment. WIPO is presently working with an African enterprise creating an African Metaverse and further making it accessible to the world at large. She stated that there was also World Economic Forum Publication which came out a couple of years ago, where the [perception of the metaverse is significantly positive in the developing world](#) as there is potential to have education, where you do not have to travel to university anymore. She reminds us that for digital health and education there are numerous possibilities to be explored, but there are still technological gaps which need to be filled to realize the full potential of the Metaverse.

Prof. Javier FERNÁNDEZ-LASQUETTY highlighted that, indeed, other investment options are being made in the Metaverse for Health and Education, which are not confined to NFTs.



QUESTION 3: PROPERTY AND METAVERSE. WHAT IS THE NOTION OF DIGITAL PROPERTY IN THE METAVERSE AND BLOCKCHAIN, FROM A LEGAL AND BUSINESS PERSPECTIVE?

Prof. Raquel XALABARDER answered that blockchain puts a price tag on an asset by creating an artificial scarcity. When you buy on blockchain you just end up buying a chain of blocks, but you do not own any underlying intellectual property. NFT buyers still believe that what they buy is “unique”; and they do: they buy a unique chain of blocks conveying an IP work or asset, but they do not acquire any IP right in it. And the value of that blockchain will be so, as long as the copyright owner does not decide to generate another NFT of the same IP asset. She concluded that she still needs to warm up to the idea of how property rules work in the blockchain, beyond the contracts that uphold it, and further jokingly remarked that the whole blockchain ecosystem of buying/ownership in virtual assets might be overrated.

Prof. Javier FERNÁNDEZ-LASQUETTY continued the conversation by bringing in the aspect of trust, and asked the speakers’ view on blockchain bringing value through trust building mechanisms.

Prof. Paul Przemyslaw POLANSKI answered that there are different models of blockchains, where some revolve around the concept of scarcity, like Bitcoin, and others that allow a smart-contract to be attached, such as Ethereum. In a nutshell, the conditions are flexible and adjustable and executed automatically on the blockchain, according to the wishes of the programmer. However, he added that blockchain has shaken the notion of the Good Old IP tool kit, in the sense that it revolves around a form of a contract,

which are written and are formal licensing contracts. Blockchain has provided a means where people are prepared to trade without a formal Good Old IP kit: legally, the buyers of these assets on blockchain might not be owning the underlying assets but factually the sellers receive money and people have embraced it. Linking to the Metaverse, the prevailing dominant model was that of platforms granting non-exclusive license to use certain art works, but the modern approach is the opposite: the rights belong to the avatars or the objects they have created.

Prof. POLANSKI added that there is going to be another challenge when it comes to consumer protection law affecting IP law. He gave the example of how consumer protection law has already recognised digital content, meaning the fact that you can pay with data for a transaction. In addition, the Italian tax authorities have started to challenge Facebook because it has not paid the revenues earned by the use of the data. He concluded that this is leading to more confusion, but things are to be explored further.

Dr. Ulrike TILL adding her comment on the above discussion, emphasized that

blockchain and metaverses should not be limited to the NFTs content. She provided an example of a current creation of a virtual influencer in India, that has been uploaded into various metaverses and there is a income stream from it, and further stated that there are numerous other use cases around blockchain and Metaverse designers where people are creating virtual designs, digital twins, business models around games where virtual assets can be traded for physical assets and many other examples. The business schemes and models which are being explored and there is a lot of uncertainty in all of these but, in conclusion, there is value creation.

Prof. Raquel XALABARDER, following **Dr. Ulrike TILL**, stated that it is interesting to observe many types of digital assets and interests coming, covered by traditional laws in the field of data protection, image rights, patents and trademarks. It is also necessary to take into account these new contract laws established by the platforms (for the access to the service), and the way to compose with it. She is confident that with traditional IP rights and contractual law, we can find the required solutions.

Prof. Javier FERNÁNDEZ-LASQUETTY, expanding on the discussion, stated that some digital creators are earning money from smart contracts, particularly through certain programmed mechanisms, such as the "droit de suite".

QUESTION 4: DO TRADITIONAL IP LAWYERS HAVE A ROLE TO PLAY IN THESE NEW FORMS OF CONTRACTS IN THE DIGITAL AGE OR HAVEN'T WARNED SUFFICIENTLY ABOUT THE NEEDS IN A CONTRACT OF THIS NATURE?

Prof. Raquel XALABARDER remarked that contracts have an important role to play, as always. Contracts may always take us further than IP laws. For instance, from an American perspective, Creative Commons licenses have secured (through contracts) moral rights protection for works that may not be formally granted moral rights under US Copyright law. Similarly, with the General Data Protection Regulation (GDPR) we have exported the European vision of data protection and US platforms have to abide by these rules.

Prof. Paul Przemyslaw POLANSKI further elaborated that speaking about formalities of licensing contracts or transfer of rights contract (referring to copyrights mentioned), the failure to harmonize and liberalize the formal contractual requirements at International and European Union level, creates tensions that affect all users. From the Professor's point of view, a WIPO treaty, other international treaties or European directives would ease and harmonize these new forms of contracts and avoid many legal uncertainties. He gave the examples of the [1980 United Nations Convention on Contracts for](#)

[International Sale of Goods \(Vienna Convention\)](#) and the [1958 United Nations Convention of the Recognition and Enforcement of Foreign Arbitral Awards](#), whose formal requirements stipulate that contracts must be in writing or sent by telex. But it does not reflect the difficulty of liberalizing these formal requirements.

Prof. POLANSKI concluded by saying that there was an attempt to adopt the [United Nations Convention on the Use of Electronic Communications in International Contracts \(New York, 2005\)](#) to formalize and harmonize international contracts among contracting parties. This convention has, however, not been adopted by the European Union and has not become a success.

QUESTION 5: IS THERE A NEED FOR REGULATION OF METAVERSE, SUCH AS A LEX MERCATORIA OR LEX METAVERSE? WOULD IT BE BETTER TO GO BEFORE A DIGITAL COURT/TRIBUNAL RATHER THAN TRADITIONAL COURTS?

Prof. Raquel XALABARDER answered that she does not know whether it should be called Lex Mercatoria or Lex Contractus but, certainly, at the end of the day, the contract that you sign to access the platform will be the one that regulates the user's activity on that platform. And in this manner, what the provisions of this contract end up regulating the activity, regardless of the (often, several) applicable laws. For instance, most contracts which are enforced on platforms like YouTube, Google or Facebook, are based on American law. By extension, that foreign law becomes contractually binding also

on EU citizens. An example: over the years "notice and take down" procedures which were not present in European national laws (or EU *acquis*), have been implemented by these platforms. She reiterated that also in Metaverse, as in these prior platforms, these contracts will be the first to guide and regulate individual actions by users and, of course, when challenged these contracts might be examined by traditional courts and be subject to the scrutiny of national laws (applicable as directed by private international law rules).

Prof. Raquel XALABARDER provided another example: the [Google books Case](#). Google used the US "fair use" defense to scan books from libraries all over the world and provide excerpts of their contents on the internet, though its powerful search engine. If Google had examined all applicable national copyright laws, the project might have never happened because according to many national laws (for instance, European copyright laws) what Google was doing might have been copyright infringement. Concluding, the Professor remarked that contracts may sometimes help us overcome shortcomings existing in national / territorial laws ... for the benefit of all.

Prof. Javier FERNÁNDEZ-LASQUETTY added that it happens in different fields like the standard essential patent, where you can be sued anywhere in different courts. A precedent exists, the UDRP rules.

Prof. Paul Przemyslaw POLANSKI

building in **Prof. Raquel**

XALABARDER's argument stated that the Digital Services Act ([DSA, Regulation \(EU\) 2022/2065](#)) has included "notice and take down" procedures. Also, [Art. 18](#) of DSA has measures to incorporate new electronic tribunals systems which are not bound by formalistic juridical procedures thus fastening and easing these procedures, only for appeal. This could be the creation of a true Lex Mercatoria type of medieval courts, which were governed, in ancient times, by traders. Nowadays, if Article 18 succeeds, we might see similar patterns applied to these new electronic courts and tribunals. The question remains who will have to pay for this, for the service and support platforms, knowing that it may not be a big player like Meta or Google, it must be independent.

QUESTIONS FROM THE AUDIENCE:

QUESTION 1: DO YOU THINK THAT THE RECENT DEVELOPMENT OF ARTIFICIAL INTELLIGENCE WILL ACCELERATE THE USE AND MASSIFICATION OF THE METAVERSE, SUCH AS THE CREATION OF VIRTUAL DIGITAL WORLDS OR SMART-CONTRACTS, IN A FASTER WAY THAN TODAY?

Dr. Ulrike TILL pointed out that AI is already having an impact. From a more skeptical point of view, Artificial Intelligence (AI) still has a stranglehold on the Metaverse, which can be beneficial or unfavorable to users. If an individual assigns a very specific task to the AI and creates a model to execute it, she or he will certainly get very good results. AI is improving and evolving dramatically. However, it is not so menacing yet have summarized **Prof. Javier FERNÁNDEZ-LASQUETTY**. The natural assumption that AI has almost "human-like" capabilities is not fully proven. AI will be able to accelerate some aspects as a human tool of how content has already been perceived, but so far **Dr. Ulrike TILL** remains cautious about the qualification of AI as a game-changer in the Metaverse.

Prof. Raquel XALABARDER as well as **Prof. Javier FERNÁNDEZ-LASQUETTY** spoke about the recent disruption of AI in universities and the impact on students and exams, because of Chat GPT.

Prof. Paul Przemyslaw POLANSKI added that while reading the opinions of AI experts and developers, who have



been working in this field for decades, almost all agree that the stage of AI is still far from extended AI or “human-like” AI. Instead, we are dealing with narrow AI, and there is a misunderstanding that surrounds this incredible technology. From the Professor’s point of view, artificial intelligence is closer to statistical data analysis operating on big data, which can be useful or useless depending on the application and the model. As far as the creation of the Metaverse is concerned, this technology will certainly accelerate and is already facilitating the programming of different worlds, or other virtual realities. Definitely, other tools that were developed years ago, such as Microsoft launching the “Co-pilot project” helped programmers to code more efficiently with the help of AI. From that point of view, AI is becoming a real core program here.

Prof. Javier FERNÁNDEZ-LASQUETTY, mentioned the recurrent use of AI, considered for many as a potential tool of comfort and improvement of work. The book “Life 3.0” written by Max Tegmark, discusses the meaning of being a human in the age of Artificial Intelligence, and paints a concerning picture.

QUESTION 2: IS THE BLOCKCHAIN ESSENTIAL TO CREATE THE METAVERSE? IS THE PUBLIC BLOCKCHAIN WHICH NEEDS TO INDUCE ITS USER TO VALIDATE THE BLOCK, PERHAPS SENSITIVE TO SPECULATION, ESSENTIAL? OR CAN WE EXPECT A METAVERSE THAT IS MORE THAN JUST A TRADITIONAL VIDEO GAME LIKE “SECOND LIFE” VIBE OR A CENTRALIZED REMOTE WAY WITH A PRIVATE BLOCKCHAIN VALIDATED BY ITS CREATOR?

Prof. Javier FERNÁNDEZ-LASQUETTY responded by saying that as we speak, no one can guess what the future might hold.

Prof. Paul Przemyslaw POLANSKI, there is a distinction between private blockchains and public blockchains. Public blockchains are actually decentralized, they have no authority, they work on consensus mechanisms. On the contrary, private blockchains instead of having the decentralization, have an entity like. For instance, it could be the creator of the game or a financial institution. He stated that we will probably witness both types of blockchains: private companies that decide to create their own private blockchains and build their own Metaverse. The concept is merely to build on an already quite mature technology that is driving the blockchain and then observe those who are willing to connect and trade on platforms that label smart-contracts like the ones mentioned above.

Dr. Ulrike TILL, noted that there will be maybe other technologies to make the Metaverse work. There is a lot of enthusiasm around blockchain, which is why, to some extent, Metaverse, blockchain and NFTs have almost been merged into one big blurred concept. Following this debate, **Prof. Javier FERNÁNDEZ-LASQUETTY** concluded with an opening on the challenges of “quantum computing”.

As a conclusive remark, **Prof. Manuel DESANTES REAL** pointed out that many technologies are moving away from the classic silos, the Metaverse embodies this phenomenon. Repeating the Metaverse as a topic is a real success, it is extremely interesting and there are certainly many issues to consider. We have just started to explore the relationship between the Metaverse and Intellectual Property.

Report written by **Girish SOMAWARPET NAGRAJ and Adèle SERIO**

[Fide](#) and TIPSA (Transatlantic Intellectual Property Academy) join forces to organize a serial of digital encounters to try and find out if Intellectual Property is equipped to face the ongoing changes that our world is experiencing.

All online encounters are opened to any interested person and speakers have been selected among the most relevant IP scholars and professionals all over the world.

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