

METaverse—VIRTUAL? AUGMENTED? OR REAL?

THE NEW FRONTIERS

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To begin with, let's define Metaverse: _____

No, that's not a typo in our first line; rather, it underscores the fact that although there are many descriptions as to what constitutes the Metaverse, there seems to be no 'real' definition—pardon the pun.

But among the attempts to explain the Metaverse are phrases such as 'decentralized platforms', 'an ecosystem of interconnectivity between the digital and physical world', 'virtual-and augmented-reality worlds', and a host of other attempts to get our heads around the concept. But for lawyers, the main issue is: what does this mean for our transactional interactions, and what laws will apply?

Getting a 'Second Life'

In 2003, San Francisco-based Linden Labs created an online multimedia world to which people related by way of their personal avatars. Called '**Second Life**', the website allowed users (called 'residents') to live out a virtual life, own virtual land, and breed virtual pets—the latter two items being available for sale or purchase. Although the term Metaverse was not yet introduced, Second Life may have, in fact, been one of its first iterations. And, early on, it was the subject of a DCMA takedown order pertaining to breedable animal avatars. (See Amaretto Ranch **Breedables**, LLC v. **Ozimals**, Inc. US.D.C. N.D. Cal C-10-05696 CRB, 2011.)

Fast forward to 2015, when two Argentinian-based developers created **Decentraland**, a ramped-up virtual world also providing land sales as NFTs purchasable via MANA, an Ethereum-based cryptocurrency. **Decentraland** bills itself as a decentralized Metaverse where users exercise 'power and control'. But in addition to the world of avatars and virtual reality, **Decentraland** allows for the development of actual businesses. A New York law firm, Falcon Rappaport & Berkman PLLC, announced the launch of its digital headquarters on **Decentraland** in August 2021, claiming to be the first law firm to establish an official location in the Metaverse.

KYC—Know Your Client

A primary characteristic of the Metaverse is that digital and physical 'personas' become intertwined. That being the case, validating identification becomes a major issue in the course of commercial transactions. Is the party entering into a transaction a digital entity? Or a real person? And in either case, how does one establish client authenticity when both goods and parties may consist of blockchains and NFTs? Presumably, the cryptocurrency world has perfected the authentication of asset ownership. But for lawyers, the Rules of Professional Responsibility continue to require that an attorney legitimately identify his or her client before taking on a case, and if an in-person meeting is not feasible, or, even a Zoom session with a human being who provides verifiable, physical ID, then a system will have to be developed in the Metaverse to satisfy the canons of ethics. Bits and bytes alone may not suffice.

Payment in the World of Virtual AML

Payments by a client (or a purchaser in a commercial goods transaction) will continue to be by way of credit card, phone app, or—increasingly—cryptocurrency. But along with confirmation of client identity comes the requirement for validation of the source of 'funds' and strong

Executive Summary

› The Issue

How to truly integrate the physical with the virtual in the context of the Metaverse?

› The Gravamen

In its current state, the Metaverse may virtually augment the reality of the physical world, but seamless integration is not there yet.

› The Path Forward

Using law developed for the Internet as a stepping stone, lawyers will need to re-set their conventional jurisprudence sights in order to resolve emerging Metaverse law issues.

safeguards against AML and other cybercrimes. Furthermore, cryptocurrency payment methods designed to decentralize the financial world are still subject to hacking and, in many jurisdictions, securities laws, and tax regimes.

Just as criminal liability can ensure to an attorney who receives his fee from an organized crime figure who places wads of the fruits of his crime on the lawyer's desk, so too, receipt of stolen cryptocurrency or other digital assets in payment can lead to culpability.

What Metaverse Lawyers Do

Where there are transactions—of any type—there are disputes and lawsuits. Just as the Internet and disputes over the IP ownership of digital avatars have bred novel legal questions, so too, real issues are emerging from the virtual Metaverse world. These include issues of jurisdictions, tax regimen, AML ramifications, cybercrime, and of course legal ethics. But 'real estate'? What will happen when 'land' disputes emerge over property that, in fact, consists of NFTs, heretofore designated as personal property? Estate planners will also be faced with novel issues related to bequests of real versus virtual property.

Although, as of yet, there is no Metaverse-specific body of laws, generally, the laws that have evolved regarding the Internet will be the basis for Metaverse rulings. The emphasis will be on IP with much focus on copyright infringement, Principal-Agency Law, and Contract Law emphasizing Smart Contract functionality of blockchain transactions. One aspect which will likely be more difficult to

adjudicate than some others will be the threshold issue of jurisdiction. If the Metaverse is 'everywhere—but nowhere specific' nailing down jurisdiction can be problematic.

In a recent cryptocurrency case, the Lead Plaintiff contended that the general geographical location of the computer 'nodes' used to trade cryptocurrency could be relied upon to determine foreign versus domestic investors—even if the actual investor's location was not known. However, the court rejected that assertion based on precedent that the situs of a blockchain transaction does not turn on the location of the nodes. (See *Williams v. Block One*, 1:20-cv-02809-LAK, August 15, 2022).

Who Will Make the Rules?

The decentralization feature of the Metaverse sounds enticing, and it also means a lack of centralized authority. Facebook and Twitter, for example, both have their own Terms of Use, but behind them are administrators who set those terms. If *Decentraland*, Roblox, and others are truly user-governed, disputes involving those platforms might be more challenging to litigate. Furthermore, real-world transactions can indeed conflict with the whole notion of seamless integration of the virtual and physical worlds: gamers have found that VR goggles, headsets, and other interface devices used to immerse themselves in the Metaverse won't help much if they suddenly have to leave the devices—and that world—to retrieve an access code, or a credit card in order to continue in the Metaverse.

Action

1 Digital Home
Before making the leap to a Metaverse home office, research what the Metaverse can and cannot do for your practice.

2 Part Real—Part Virtual
Understand what functionality can be fully virtual and what must remain within the confines of the physical world.

3 Body of Law
Learn how to adapt contemporary Internet Law to the issues you will be facing with Smart Contracts, Virtual 'Land', Blockchain, Jurisdiction, and Legal Personality.

4 Professional Responsibility
Know what ethical considerations will govern your Metaverse practice with special emphasis on proper identification of your client and authentication of his or her contract rights and property ownership.

Further Reading

1. <https://www.dlapiper.com/en/us/insights/publications/2022/06/exploring-the-metaverse-ipt-news-june-2022/>
2. <https://theconversation.com/the-metaverse-three-legal-issues-we-need-to-address-175891>
3. <https://abovethelaw.com/2022/04/what-laws-apply-in-metaverse/>
4. <https://osgoodepd.ca/blog/the-metaverse-understanding-its-impact-on-the-practice-of-law/>
5. <https://cxm.co.uk/real-world-transactions-against-the-notion-of-the-metaverse/>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years of experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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