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Will Law Transcend into Metaverse? (Part 1)

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[1] Metaverse¹ – the transcendent universe – refers to a universe extending or lying beyond the limits of ordinary experience² and is said to be the convergence of (i) virtually enhanced physical reality (VR) and (ii) physically persistent virtual space. It is a fusion of both allowing users to experience it as either.³ Sounds pretty mind blowing.

[2] In this article I attempt to explain what metaverse might become and outline a few legal implications to be followed-up in a forthcoming article.

[3] Let me start with a negative: Metaverse is not just a next generation Second Life⁴. Metaverse does *not* yet exist. To date it is merely a vision. From today's perspective, there are (at least) three requirements for turning this vision into *reality*:

- 1) A decentralized Internet. This is currently known as Web3⁵. Web3 refers to the next potential iteration of the Internet where everything is decentralized by design, so that instead of users accessing the Internet through services mediated by large corporations, it's the individuals themselves who own and control pieces of the Internet⁶;
- 2) Software and hardware to enable transcending from the physical world into (and from) metaverse: for instance (i) with VR goggles or other head- and handsets allowing users to dive completely into a *virtual world*⁷ (e.g. games, movies, live sport); or (ii) by *augmented reality* (AR) allowing users to augment the physical world by seeing at the same time real scenes just in front of them combined with some virtual objects that do not exist in the physical world. Examples of AR are 2D applications overlaying camera recordings with virtual objects – seen every now and then in video conferenced during the current COVID pandemic – or the display of holographs in the real world; and
- 3) Blockchain technology, a shared, immutable ledger that facilitates the process of recording transactions and tracking tangible (e.g. real estate or chattel) as well as intangible assets (e.g. intellectual property)⁸. The blockchain will be required to interact in metaverse, be it, for instance, by using cryptocurrency for transactions or to prove ownership of (virtual) assets or Internet of Things (IoT).

[4] There seems to be a demand for mixing real and virtual life, at least in the gaming industry, where gamers purchase in-game content. Examples are in-game currency; characters (avatars), skins, and other appearances (e.g. clothes or jewellery); levels and maps; weapons and tools; or virtual real estate⁹.

¹ A term coined by Neal Stephenson in his 1992 cyber punk novel «Snow Crash».

² MERRIAM-WEBSTER: «transcendent», [tinyurl.com/mr3vxhba](https://www.merriam-webster.com/dictionary/transcendent).

³ Metaverse Roadmap, Pathways to the 3D Web, 20. Glossary, [tinyurl.com/5bpj4m3y](https://www.metaverse-roadmap.com/glossary).

⁴ <https://secondlife.com/>.

⁵ Web 1.0 (approx. until 2004) consisted mainly of users consuming static content. The current Web 2.0 allows sharing and interaction between users of their own content.

⁶ Aaron Mak, What Is Web3 and Why Are All the Crypto People Suddenly Talking About It?, 9.11.2021, [tinyurl.com/vwvzbbp](https://www.aaronmak.com/what-is-web3).

⁷ ZHAO HE, et al., Progress in virtual reality and augmented reality based on holographic display, Applied Optics Vol. 58, Issue 5, pp. A74-A81 (2019), [tinyurl.com/ycktskhd](https://doi.org/10.1364/AO.58.000000).

⁸ IBM, Blockchain success starts here, [tinyurl.com/2p8ehk35](https://www.ibm.com/blockchain).

⁹ Cf. e.g. TFL, [tinyurl.com/ycks29sr](https://www.tfl.com).

[5] Since 2019, EPIC Games Inc. has hosted three concerts by Star DJ Marshmello¹⁰, Rapper Travis Scott¹¹, and Pop star Ariana Grande¹² in its game Fortnite. Roughly a total of 50 million viewers (gamers) viewed these concerts. Just as comparison, 4.5 million people attended Michael Jackson's «Bad World Tour» at the end of the 1980s, and 7.2 million people attended U2's «360 Tour» a decade ago, both over a period of two years¹³. In 2022 ABBA will be presenting its «ABBA Voyage Tour» where the band will be projected holographically onto a (real life) stage in London¹⁴.

[6] The market for a technology and life style space like metaverse seems promising, especially as its vision is to *not* be confined to one game, application, VR or AR space. Instead, it is envisioned that an avatar can hop from one platform to another, i.e. allow *interoperability* of the platforms. Furthermore, within metaverse anything should be possible. Why be confined to playing tennis on a virtual tennis court (game) if one rather used the red sand to build a castle instead?

[7] All this being said, metaverse, like the Internet as we know and use it today (web 2.0), is not a legal vacuum. Metaverse will extend current legal issues and most probably also trigger new ones, for instance:

- 1) Data: Not only will it be difficult to determine who bears the responsibility for processing personally identifiable information (PII) due to the decentralized network, but as technology evolves, PII processed in metaverse is likely to include biometrics (complexion, voice, movement, etc.) of the data subject's avatar.
- 2) Ownership: Will non-fungible tokens (NFT), a digital asset representing ownership in a unique item or content¹⁵, replace the legal norms of how ownership of both tangible and intangible (intellectual property) assets are transferred?
- 3) Trademarks: As you will notice, Rapper Travis Scott wore Nike sneakers in his 2020 Fortnite concert appearance. On 27.10.2021 Nike Inc. registered *several* trademarks for «Downloadable *virtual goods*, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories *for use online and in online virtual worlds.*»¹⁶ This is hardly a coincidence.
- 4) Licensing: Under what data rights, copyright and trademark licenses will avatars be exchanging data and IP in metaverse? Will minting a virtual asset¹⁷ be a derivative work and thus potentially be qualified as copyright infringement?
- 5) Enforceability: Will reliance on the immutable blockchain suffice to prove ownership? And if so, how (and where) will it be enforced?

[8] Please join me in my forthcoming article where we will explore some of these legal challenges.

¹⁰ YouTube, Marshmello, tinyurl.com/275xwffr.

¹¹ EPIC Games, Fortnite, Astronomical, tinyurl.com/yewd3h74.

¹² *Ibid.*, Rift Tour, tinyurl.com/mrxaps69.

¹³ Wikipedia, List of highest-grossing concert tours, tinyurl.com/2wd9bbep.

¹⁴ ABBA Voyage, tinyurl.com/2h5546sy.

¹⁵ Ethereum, Non-fungible tokens (NFT), tinyurl.com/mr3dd8u4.

¹⁶ Cf. e.g. USPTO serial trademark number 97095855 for goods and services classes 9, 35 and 41.

¹⁷ E.g. Mint Space, tinyurl.com/3c69ubb5.