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## **IT Law: Will Law Transcend Metaverse? (Part 2)**

Category of articles: TechLawNews by Ronzani Schlauri Attorneys

Region: Switzerland

Field of law: LegalTech

Citation: Daniel Ronzani, IT Law: Will Law Transcend Metaverse? (Part 2), in: Jusletter IT  
31. Mai 2022

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[1] In TechLawNews 19<sup>1</sup> we introduced the concept of metaverse concluding that it did not operate in a legal vacuum. In this second part, we look at data protection as well as ownership and licensing in more detail.

### 1. Data Protection

[2] Metaverse is transcendent, extending into another universe. It is unearthly. Typically, one accesses metaverse via an avatar, an electronic alter ego representing a computer user.<sup>2</sup>

[3] The current<sup>3</sup> and new<sup>4</sup> Swiss data protection laws (FADP) protect processing of personal data of (currently still) legal and/or *natural* persons (i.e. individuals). However, transcendent is the opposite of natural.<sup>5</sup> If an avatar is not natural, then by definition the FADP does not apply to «it». Sure, as long as an individual provides personally identifiable information (PII) via his/her avatar into metaverse the PII of such individual is protected by the FADP. An example could be a credit card number used for an «in-metaverse-purchase» (gaming, music) or a person's voice ID in metaverse (biometric data). But if such in-metaverse-purchases or other interactions relating to and identifying an avatar in metaverse occurs without any link to the physical world, then such data are not protected under the FADP.

[4] Rapid technological developments have increased the scale of collection and sharing of PII significantly.<sup>6</sup> Given that metaverse is technology based and is envisioned to be a parallel space where anything should be possible – similar to what is possible in the physical world – abuse of processing data identifying avatars is a potential risk. If avatar identifying information (AII) were to be protected in metaverse, then, to mitigate the risk of misuse of processing AII, (re-) introduction of a concept similar to data protection of *legal* entities, i.e. the protection of «artificial» persons, as currently still protected in Switzerland until 1.9.2023, might be a solution. This would elevate AII of avatars to a DP level as (currently still) for legal entities.

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<sup>1</sup> TLN 19, January 2022, [tinyurl.com/3f6uaakd](https://tinyurl.com/3f6uaakd).

<sup>2</sup> Merriam-Webster: «avatar», [tinyurl.com/2p8vjk2p](https://tinyurl.com/2p8vjk2p). And thus not the «incarnation in human» (i.e. outside of a computer).

<sup>3</sup> Federal Act on Data Protection (FADP; SR 235.1).

<sup>4</sup> Revised FADP (BBl 2020 7639; coming into force 1.9.2023. No protection anymore for legal entities).

<sup>5</sup> *Supra* FN 2.

<sup>6</sup> Recital 6 GDPR (EU 2016/679).

## 2. Ownership and License

[5] Ownership is envisioned to be possible in metaverse. Secure irrevocable tokens, so called non-fungible<sup>7</sup> tokens (NFT), allow individual ownership of digital assets<sup>8</sup>. Minting<sup>9</sup> makes each NFT *unique* by recording a particular attribute to it, thus making it scarce. Examples of NFT are art (photos, GIFs, etc.)<sup>10</sup>, music<sup>11</sup>, (in-) tangibles<sup>12</sup>, or even real estate<sup>13</sup>.

[6] Compared to «normal» copied digitized items which are difficult to distinguish from one another and for which it is challenging to prove ownership, NFTs contain built-in authentication that serves as proof of ownership<sup>14</sup>. NFT ownership is verifiable by certificates in blockchain networks. But what is ownership in metaverse?

[7] Art. 641 of the Swiss Civil Code (CC) stipulates that the owner of an object is free to dispose of it as he or she sees fit within the limits of the law. An object is defined, among others, as either chattel being a movable *physical* object (art. 713 CC) or immovable (physical) property, e.g. parcels of land and buildings thereon, or distinct and permanent rights recorded in the land register (art. 655 para. 2 no. (1) and (2) CC). NFTs are neither chattel (movable physical objects) nor are their acquisition or rights recorded in any land register pursuant to the CC.

[8] In the physical world NFTs cannot be owned until they materialize, i.e. are produced as chattel or registered in some form. They can only be protected by copyrights, design rights, trademarks, or other intellectual property rights. But as such, these (intellectual property) rights can be assigned or licensed (except for moral rights), the most ownership-like license being an exclusive and unlimited use right (temporal, factual and geographical). Violation of an NFT in the physical world would therefore likely be an IP infringement, not a property claim.

[9] On the other hand, in metaverse ownership is established by minting (uniqueness) and certification in blockchain networks (proof). The blockchain fulfils neither the requirements for registration of designs or trademarks<sup>15</sup> nor those for the land registration<sup>16</sup>.

## 3. Lack of Legal Transcendence

[10] Currently there seems to be a legal gap between the physical world and metaverse, at least as regards data protection and ownership. If one day the virtually enhanced physical reality (VR) and physically persistent virtual space are supposed to converge, then this gap will need to be closed legally. This might occur, for instance, by adapting the current law to transcend to metaverse (e.g. ownership register) or by establishing laws for metaverse that can be enforced in either world.

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<sup>7</sup> Not interchangeable because unique.

<sup>8</sup> NFI, Non-fungible Token – Everything You Need To Know, [tinyurl.com/mftxfb3](https://tinyurl.com/mftxfb3).

<sup>9</sup> Ethereum, How to mint an NFT, [tinyurl.com/3uc6dbpt](https://tinyurl.com/3uc6dbpt).

<sup>10</sup> Foundation, NFTs, [tinyurl.com/bdepstvb](https://tinyurl.com/bdepstvb).

<sup>11</sup> *fiverr*, [tinyurl.com/422z5vjk](https://tinyurl.com/422z5vjk).

<sup>12</sup> Metagrail, The X, [tinyurl.com/ye278zks](https://tinyurl.com/ye278zks).

<sup>13</sup> Marketplace, Land, [tinyurl.com/3shbhest](https://tinyurl.com/3shbhest).

<sup>14</sup> *Supra*, FN 8.

<sup>15</sup> IGE/IPI, Protecting your IP, [tinyurl.com/yw4w2373](https://tinyurl.com/yw4w2373).

<sup>16</sup> Land Registry, [tinyurl.com/25wh5zyt](https://tinyurl.com/25wh5zyt).