

Cases Show Real-World Laws Likely Apply In Metaverse

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Endless articles, commentary and blog entries have been rattling the cage about the brave new world of the metaverse and the unprecedented legal issues that may arise and, in some cases, that have already arisen.

But how brave and new are these legal issues? Open minds and creativity will, of course, be essential in tackling them, but, like most things in the law, the metaverse is simply a newly packaged set of facts that largely fits within our established precedent. It is a new arena for people to transact, collaborate and create.

The term "metaverse" originated 30 years ago, in a novel written by Neal Stephenson, "Snow Crash." The novel sets out important imagery to help understand why the metaverse isn't really that different from existing legal issues:

When Hiro goes into the Metaverse and looks down the Street and sees buildings and electric signs stretching off into the darkness, disappearing over the curve of the globe, he is actually staring at the graphic representations — the user interfaces — of a myriad different pieces of software that have been engineered by major corporations. In order to place these things on the Street, they have had to get approval from the Global Multimedia Protocol Group, have had to buy frontage on the Street, get zoning approval, obtain permits, bribe inspectors, the whole bit.

Following Stephenson's imagery, you can picture the metaverse as a main street. You can open a store, advertise goods, share and exchange ideas, and engage in any form of real-world commerce you can imagine — only virtually.

Here you do not necessarily move linearly like you would in the real world. You can transport yourself instantly down a side street, visit a friend in a different location, attend a virtual conference, or simply unplug and disappear.

These multifaceted webs of interactions and engagement will force lawyers to apply current laws in an arguably more holistic, three-dimensional way.

For one, the metaverse is global; choice of law, jurisdictional law, contract law,



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content standards, and other laws and regulations will have to accommodate this conundrum. Also consider a concert in the metaverse: Law in play will not just consider the artist performing, the rights to the music and the venue. One must also consider the virtual engine underpinning the production, licenses and contracts to any input from virtual contributors, and even digital dance choreography.

Precedent Is Everywhere

But fear not: This is neither the first attempt at a virtual world, nor the first effort to create a litany of litigation over the very issues that are percolating in the metaverse. Video games like Second Life, a 3D virtual world full of content created by its users, and Fortnite, an online video game where players can not only fight, but meet up, watch a concert and build an island, are early versions of metaverses.

Second Life is famous for its free-market economy. Players of Second Life, called "residents," can buy and sell goods with Second Life currency, which can be exchanged for real currency. Since the appearance of Second Life, created by Linden Research Inc. in the 2000s, it has become widely accepted that laws applicable in real life are also applicable to online life, including, as discussed below, in the areas of intellectual property and real property.

Battles Over Virtual and Real Property

Perhaps one of the most active areas, not surprisingly, was in the space of intellectual property. The Second Life metaverse generated a handful of cases involving copyright, trademark and counterfeiting issues. Like in most metaverses, the users own the copyright to the content they create. The result was real-life battles over artificial concepts.

For example, in 2010, two breeders of metaverse animals — Amaretto Ranch, which bred virtual horses, and Ozimals, which bred virtual bunnies — became ensnared in three years of litigation over whether the online animals violated the Digital Millennium Copyright Act, spawning additional claims of defamation, libel and unfair competition. The lawsuit also successfully enjoined Linden Labs from taking down any of the content.[1]

Similar cases raised the issue of what obligations did the metaverse owner have to police its virtual world.

For example, in Taser International v. Linden Research Inc., Taser became aware of several uses with Second Life of its trademarked word "taser," including advertisements for similar non-lethal virtual weapons.[2] Taser filed litigation against Linden, and within days, it appears that Linden successfully identified the infringing user(s). By the week's end, no instances of "taser" could be found.

The possibility of a trademark action causing a word to disappear from an entire metaverse community are thus well-grounded in existing precedent. The consequences of such an action, however, are much less clear.

A more creative dispute spawned from an artist's use of the phrase "SL" — for Second Life — in his online art. Minsky, a real-world artist, opened a virtual art gallery, and then published a real-world book describing the "SLART" that had been created online. Having secured trademark protection for "SLART," he discovered that another artist was using the phrase "SLART Garden" and had developed a community called "SLartists of Second Life."

Minsky first looked to Linden to enforce his intellectual property rights before engaging in litigation. Instead, Linden refused, Minsky filed suit, and Linden countersued and attempted to remove Minsky for infringing their mark, SL. Ultimately, the parties settled out of court, and Minsky continued to utilize his SLART mark in Second Life.[3]

Finally, Eros LLC v. Linden Research is an example of counterfeiting in the metaverse.[4]

Eros marketed various erotic items and skins within Second Life, and claimed that its digital products had been counterfeited by Second Life residents. Linden responded that it was nothing more than a marketplace and was effectively a manager of digital rights.

Eros countered that Linden provided the platform and access for the opportunity to pirate the materials, and as the operator of the most widely used currency exchange, profited from the counterfeited goods. Eros brought a class action on behalf of similarly situated victims of infringement on Second Life. Ultimately, the matter was settled out of court on an individual basis.

Each of these cases provides insight into future applications of existing laws to the metaverse, as well as the obligations, if any, of the metaverse owners to monitor and police the content and infringing scenarios online. The cases also speak to the likelihood that the Digital Millennium Copyright Act will not provide the same shield to metaverse operators that has been recently enjoyed by more social media platforms.

The scenarios further reflect that in a digital world, intellectual property disputes necessarily become disputes that have real property characteristics.

Much like intellectual property in the metaverse, disputes have come up regarding the purchase of "real" property.

In one such dispute users filed a class action against Linden on behalf of users who had their virtual property "seized" by Linden for various reasons and not returned. The users analogized the purchase of virtual property as akin to those of real property, and argued that Linden reclaiming of the property resulted in a fraudulent misrepresentation and conversion of their property.

Ultimately, the court certified the class of individuals and ultimately the matter settled for 43 million Linden dollars — worth about \$172,000 at the time.[5]

In a similar matter, the plaintiff, Bragg, claimed that he was induced into investing in virtual land by representations made by Linden and Rosedale in press releases, interviews, and through the Second Life website. He also paid Linden real money as a tax on his land.

Bragg both purchased land and crafted digital fireworks to sell to other avatars for profit. Linden had seized Bragg's land, claiming he had purchased it through "exploit" and ultimately freezing Bragg's Second Life account. The matter ultimately was arbitrated based on the terms of use.[6]

Both of these cases reflect that courts have looked at property rights similarly as those rights that exist in the real world, and have applied common law torts, such as conversion, to allow for the recovery of the value lost for the property purchased.

Some Areas Remain Untested

Surprisingly, there does not appear to be any precedent in the virtual world for these claims, despite much offline documenting of issues. Current metaverse operators appear to be incredibly proactive, and have taken efforts to protect users in virtual worlds from things such as digital sexual harassment: nonconsensual touching, verbal harassment and simulations of sexual assault.

And, as more aspects of life enter the metaverse and the technology becomes more immersive, it is possible that notions of bodily integrity — and what it means to violate bodily integrity — will similarly develop.

The metaverse platforms are trying to develop technology solutions to combat bodily assaults. For example, in February, Meta added a feature called "personal boundary" that can be used to stop other avatars from getting too close — but that is unlikely to disrupt all attacks.

Likewise, though it never reached the attention of the courts, there was plenty of interest in the tax implications of Second Life's many virtual transactions. Some academics proposed treating revenue earned in Second Life as taxable income because it could be exchanged for fiat.

The IRS similarly remarked in 2007 that redeeming Linden currency for money, goods or services would have tax consequences. Congress, in 2006, considered preparing a study of virtual-world tax issues through its Joint Economic Committee, but the study never materialized. And starting in 2013, Second Life began issuing Form 1099-Ks to users who received proceeds over \$20,000 from the exchange of Lindens.

Conclusion

Past is precedent, even in a new world. But the present is already being written.

For example, in *Hermes International v. Rothschild*, the plaintiff alleged that its Birkin brand was being infringed by the online MetaBirkin NFTs.[7] The court denied the defendant's motion to dismiss on the basis that consumers, based on the pleadings, could be misled by the MetaBirkin NFT's source.

And in *Doe v. Roblox*, the court allowed the plaintiff's allegations of fraudulent commercial practices to survive dismissal despite the defendant arguing that the claims were barred by Section 230 of the Communications Decency Act.[8]

Companies should look carefully at these past cases, as they provide, even in untested areas, strong guidance as to what the likely outcomes will be for operation in the metaverse.

An expectation exists that activities in the metaverse will be policed, and enforced, much like they would in the physical world, and compliance with the formalities of normal commercial interactions, even when "playing" in the metaverse, will apply.

A strong understanding of the past will make sure you are protected today.

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[1] See *Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, Case No. 10-cv-05696 (N.D. Cal).

[2] *Taser International v. Linden Research, Inc.* (D. Az. 2009).

[3] See *Minsky v. Linden Research, Inc.*, Case No. 08-cv-819 (N.D.N.Y.).

[4] *Eros LLC v. Linden Research* (N.D. Cal. 2009).

[5] See *Evans v. Linden Research*, Case No. 11-cv-01078 (N.D. Cal.).

[6] See *Bragg v. Linden Research*, Case No. 06-cv-04925 (E.D. Pa. 2007).

[7] *Hermes Int'l v. Rothschild* (S.D.N.Y. 2022).

[8] *Doe v. Roblox*, (ND Cal 2022).