



The Metaverse and Legal Problem Areas (2)

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Work, sell and advertise products, manage virtual properties, or simply play and interact with other users. In the metaverse as a virtual world, rules and laws will also apply to all human and economic activities. From copyright law to labour law, inheritance law and the law of virtual real estate, the metaverse poses new challenges for the legal system, companies and consumers. Some of these are presented below. The Compact is based on EU and German law.

Trade mark law

In the metaverse, as in the real world, people or avatars wear clothes, often from well-known brands. Trade mark infringements are inevitable. Several cases are already known in which virtual (NFT) goods were sold in the metaverse that were strongly modelled on branded products in the real world. For example, in the “MetaBirkin” case, in which virtual handbags were brought onto the market that closely resembled the famous Birkin bag from Hermès. To avoid such incidents, manufacturers of brand and design products with a strong visual component, such as fashion or furniture design, should take precautions to protect themselves against such attacks.

Protection due to exploitation of reputation only exists for particularly well-known trade marks. In addition, even for very well-known trade marks, an

extension of the trade mark application is recommended, as the current one does not cover the virtual version of a product. Since the beginning of 2023, virtual goods and services can be protected, in particular in Nice Class 9 and Nice Class 35. For data that cannot be downloaded, a categorisation in Class 42 is proposed.

Competition law

Three types of competition are conceivable in connection with the metaverse: Between merchants in the metaverse who sell virtual goods there, between a metaverse merchant and a real-world merchant, and between two real-world merchants who use the metaverse as an e-commerce platform. While the general competition law rules should apply to the latter, the first two situations are interesting.

The first step is to determine the applicable law, which can be problematic under certain circumstances. There is also the question of whether merchants in the metaverse can even be competitors of merchants in the real world. It is also unclear, for example, which requirements apply to advertising placed in the metaverse in order not to exceed the limits of unacceptable nuisance pursuant to Section 7 (1) of the German Act against Unfair Competition.



Sales law

In the past, if you “bought” a purely virtual product, such as a picture for your avatar’s house (think of the popular game *The Sims* in the early 2000s), it was merely a licence agreement, possibly of an exclusive nature. Blockchain technology, on the other hand, makes it possible to acquire digital products in an owner-like position, regardless of the general discussion about the introduction of data ownership. What is being purchased is the “original” image, certified by an NFT.

Nevertheless, the lack of data ownership in German and European law poses many questions for the holder of this owner-like position: Can a warranty be invoked in the event of a defect? Does consumer protection apply? And what applies if the buyer is prohibited from disposing of the virtual object? In the real world, such an agreement would have no effect in rem towards third parties under German law.

Virtual real estate law

As in the real world, land and immovable property can also be acquired, developed, rented and sold in the metaverse. In 2022, NFT properties worth USD 1.4 billion were traded, compared to USD 0.5 billion in 2021. Virtual properties are not acquired by conveyance and entry in the land register. Only the corresponding NFT acts as a title deed. Registration in the land register is currently not possible at all, nor is encumbrance with a mortgage or land charge. At present, in the absence of data ownership, only an owner-like position is acquired and not ownership in the previous sense.

Since 01 January 2022, the general rules of tenancy law have applied to the rental of virtual properties due to the new Section 548a of the German Civil Code. However, the special provisions on residential leases should not apply, as the protective purpose of the standards is not affected when renting a “flat for the avatar”.

Another interesting question is whether building regulations could apply in the metaverse. For example, a

virtual building could be demolished if it violates law concerning the respective interests of neighbours.

Labour law

Metaverse platforms such as *Microsoft Mesh* are designed for the world of work. Meetings with colleagues and customers can take place here in the form of avatars. The occasional transfer of individual appointments to the metaverse is hardly a problem. However, the situation is different if the entire working time is to be shifted to the metaverse in the long term, especially if the employee is to switch from working at the company to working from home. In 2019, the Berlin-Brandenburg Regional Labour Court rejected the possibility of a unilateral instruction to work exclusively from home in the long term. This would mean that the employee would lose direct contact with colleagues and be more difficult to reach for the works council and trade union.

Even if the metaverse activity is not associated with the work from home, the transfer is by mutual agreement or in the case of new hires with a corresponding contractual clause, the continuous use of virtual reality is a burden that can lead to temporary visual impairment and nausea, for example. The employer must provide sufficient breaks during which the glasses are removed.

Employers who consider a future relocation of work to the metaverse to be possible should take precautions with correspondingly broad clauses when hiring new employees. The co-determination rights of the works council must also be observed.

Inheritance law

If one has purchased property or other valuable items in the metaverse, or if one is in possession of cryptocurrencies or NFTs, the question of their inheritability arises. Pursuant to Section 1922 (1) and Section 857 of the German Civil Code, legal relationships in rem and under the law of obligations as well as the deceased’s property are transferred to the heirs. This means that



virtual objects and cryptocurrencies are in any case inheritable (if their existence is known at all!). In practice, it is problematic if the access data for the crypto wallet cannot be found. It is then difficult or even impossible for the heirs to gain access to the digital property, which renders it completely worthless. People who own cryptocurrencies or valuable virtual items should definitely seek advice on a suitable succession plan and the options for securely storing access data.

Tax law

The anonymised appearance of the parties involved, which is made possible by blockchain technology, makes it considerably more difficult to assign transactions to individual persons and jurisdictions, which also complicates the determination and collection of taxes.

In Germany, the Federal Fiscal Court laid down an important principle on turnover taxation in the metaverse in 2021. According to this, the rental of virtual land in exchange for in-game currency is not taxable. The tax liability only arises with the exchange into FIAT currency, such as euros and dollars, or exchange-traded cryptocurrencies. In the case of rental per se, there is no benefit to the recipient of the service that leads to consumption within the meaning of VAT law. This would require an identifiable consumer to be provided with a real economic advantage.

A year ago, the OECD proposed a legal framework at international level to standardise the global levying of taxes on profits from crypto trading and close loopholes. This was adopted by 48 countries in November 2023 and is due to come into force from 2026.

Criminal law and the platforms' domiciliary rights

Just like in the real world, criminal offences are also possible in the metaverse and are covered by criminal law. *Horizon Worlds* by Meta, for example, already had to contend with potentially criminal behaviour (sexual offences) in the beta phase. The criminal liability of offences committed in the metaverse is undisputed.

Nevertheless, tracing and identifying the offender is difficult due to the blockchain environment and the lack of a clear name requirement.

Sanctions such as the suspension or blocking of user accounts can also be imposed by the domiciliary rights of the platform or the owner of a virtual property. However, these measures are no substitute for enforcing the applicable criminal law, especially as a blocked user can usually create a new account without any problems. Law enforcement will therefore have to adapt to the metaverse in order to ensure comprehensive protection of the legal system.

Right of identity

Names, pseudonyms and stage names with a reputation are protected as a special form of identity right in accordance with Section 12 of the German Civil Code. If these are misused by fake avatars, there is also a right to removal and injunctive relief in the metaverse. In the case of commercially used avatars, company law pursuant to Sections 17 and 18 of the German Commercial Code applies. The depiction of living persons without their consent should generally be inadmissible due to the right to one's own image.

Data protection law

The use of VR and AR technologies poses new data protection challenges in the metaverse. Integrated sensors can record and analyse the facial expressions, gestures and body language of users, known as *ubiquitous computing*. Such physical expressions can usually be assigned to a specific person and are therefore personal data within the meaning of the GDPR. This data is particularly relevant if it can be used to determine the user's emotional state or interest in a particular object.

For example, if "Mr Smith" tends to treat himself to a box of chocolates when he is in a bad mood, AR or VR hardware could be used to detect that he is sad. In combination with an analysis of purchasing behaviour, it could be determined in the medium term that Mr Smith' bad mood and chocolate purchases



are linked. If the corresponding facial expressions are recorded, he could be shown adverts for sweets precisely when he is most susceptible to them.

Such an analysis would deeply encroach on the personal rights of users. Beyond the question of the existence of a possible legal basis for data processing (Art. 6 GDPR), the ethical question therefore arises as to whether this should be permitted at all. It would be conceivable to categorise such facial expression data as particularly sensitive data in accordance with Art. 9 GDPR, which may only be processed under strict conditions.

Outlook

Due to the great economic potential, it is worthwhile for companies and individuals considering operating in the metaverse, as well as for those wishing to protect themselves from such activities, to follow the further development of the metaverse and its law.

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