



Mega Metaverse Round-Up For Lawyers

Opportunities, risks, and
a whole lotta pontification

Welcome from the Metaverse... Your Future?

If you live on planet earth, you've probably heard of the metaverse — and if you haven't, you will.

It's being heralded as the next big thing in technology, life, and society. That may be true. That may be wrong. We honestly have no clue. But we do know that there are already opportunities and risks for lawyers and their clients in this wild new digital world.

To help you make sense of it all, we spoke with lawyers, tech experts, and various nerds to learn the best ways for lawyers to protect themselves and their clients in the metaverse. From data to privacy law to I.P. and U.P. — user protections — we cover it all.

To learn more, read on. Or you just could skip to the end of each section for the major take-aways — but where's the fun in that?

Metaverse Basics: Origins, Definitions, and Odd Things, Like NFTs

The Birth of the Metaverse:

The term “metaverse” first appeared in Neal Stephenson’s 1992 sci-fi novel *Snow Crash*. In that fictional work, the metaverse is an immersive VR world used to escape the soul-crushing nightmare that is life in an autocratic dystopia. Sound familiar?

While our non-fiction metaverse isn’t quite as advanced as Stephenson’s imagining — yet — it may be soon. And when that happens, all bets are off.

But What the Heck Is the Metaverse?

There's debate on this seemingly easy question.

Some define the metaverse as more immersive and VR-esque, as in Stephenson's novel: a separate, all-encompassing realm ruled by avatars and cryptocurrencies.

Others see the metaverse as that plus a digital overlay atop our real world. Pokémon Go is a good example of that kind of overlay — you use your phone to “see” digital representations tied to a specific time and/or place. QR codes like restaurant menus are also sometimes described as basic metaverse technology.

Though a precise definition may elude us, it's clear the metaverse is here. Or there. Or everywhere.

Wait, So Where Is the Metaverse?

Unlike the internet, which is one connected “place,” the metaverse is currently a collection of unconnected platforms and hardware-enabled systems.

For example, there are two popular online games, Roblox and Fortnite. They're both metaverse-ish in that they're immersive and have digital currencies and avatars, but they are not connected to one another. Meanwhile, the company formerly known as Facebook and now known as Meta is creating a fully immersive metaverse tied to a specific piece of technology, their Oculus headsets.

None of these realms are connected at the moment. Could they be someday? A lot of people say so, while others, like Alex Cox from the firm Locke Lord, suggest one dominant metaverse will win out — that is, unless lawyers get involved: “The potential value in being the sole intermediary will be too valuable and I doubt companies will support interoperability without legal requirements.”

Whatever happens, lawyers will have immense power in shaping the metaverse to come — and risks to navigate, too.

Other Terms You Can Toss Into Conversation to Sound Smart:

Blockchain: Digital “ledgers” made of secure “blocks” of data that interlock via shared code and therefore cannot be altered. They are used to authenticate documents, digital files, NFTs, and other forms of online ownership and organization.

Smart Contracts: Smart Contracts are blockchain-enabled programs that execute specific actions when certain parameters are met. For example, a smart contract could say “sell all shares” if or when a crypto currency reaches a certain value. They're currently used a lot in trade and commerce but may be used more in personal wills and inheritance matters.

eDiscovery: eDiscovery is like analog discovery but revolves specifically around electronic communications. If you haven't done eDiscovery yet, brush up on the process because the metaverse is going to greatly expand that realm.

OpenSea: Kind of the “Amazon of NFTs,” OpenSea is an online marketplace for NFTs.

Decentraland: One of the more popular 3D virtual worlds, Decentraland is already home to digital outposts for Sotheby's, Samsung, and N.J. personal injury attorney Richard Grungo. Read about his experience below.



The hot new thing in digital commerce, NFTs (Non-Fungible Tokens) are digital units of data, often in the form of a visual, video, or music file, that can be bought and sold online with Bitcoin or Dogecoin or some other of the dozens of cryptocurrencies.

As silly as “digital goods” may sound, legacy brands like Chanel and Nike are already getting in on the action by developing NFT wares, and already there have been major IP-related lawsuits stemming from NFTs, such as [*Roc-A-Fella v. Damon Dash*](#), [*Hermes v. the artist Mason Rothschild*](#), and, yes [*Olive Garden v. A Person Who Sold NFTs of Olive Garden locations*](#).

That’s just the tip of the iceberg in terms of IP, NFT, and other metaverse-related lawsuits happening now or to come. In most cases, the real world IP should be fairly easy to establish and will take precedence over online claims.

Jeanne Hamburg, a Norris McLaughlin lawyer who covers these topics at the firm’s site, [*More Than Your Mark*](#), says, “If you didn’t create the work that was the basis for the NFT, then the NFT is unlawful. It’s an infringement, same thing with VR.” That doesn’t mean there aren’t still risks ...

WTF
is
an
NFT?



Key Takeaways:

Here are some ways lawyers can protect themselves from NFT and other digital asset-related lawsuits or liabilities:

Know Your Stuff: It's an established fact that knowledge is power, and that's definitely the case here. Avoid legal issues by thoroughly reviewing any and all rights, licenses, and point-of-sale terms when dealing with NFTs or other digital goods.

Tell Your Clients, Too: To best represent your clients, and to [avoid any malpractice suits](#), three lawyers from Cooley, associates Vikki Nguyen and Liz Paisner and partner Adam Chase, said in an email exchange: "IP attorneys can help NFT creators in understanding existing obligations and restrictions to minimize infringement claims." They also noted: "Lawyers can communicate the scope of rights to purchasers of NFTs — whether it's drafting point-of-sale terms or embedding the license in the metadata of NFTs."

Be Smart with SmartContracts: Risk-averse lawyers should offer NFT or blockchain-verified contract services for themselves and clients looking to authenticate important legal documents, both in the metaverse and online. Richard Grungo, the aforementioned lawyer with a metaverse space and whom we feature below, notes, "Almost every important document will be an NFT, because you can prove it's one of a kind — wills, property ownership, NFTs, you're going to see it more and more."

Watch the Wire Fraud: Along those lines, be aware of the potential for fresh new scams out there. "The risk of wire transfer scams will intensify as it becomes more difficult to tell normal from abnormal when setting up client accounts or processing client instructions," says Paul Bond, partner at Holland & Knight and a member of the firm's Data Strategy, Security and Privacy Group. Setting up the proper [legal technology for your law firm](#) can help you avoid some of these scams.

Watch for Consumer Fraud, Too: Richard Grungo, the lawyer with the metaverse office, also foresees vast potential consumer fraud on the metaverse. "There's going to be tons of consumer fraud emanating from this world. Considering the difficulty of purchasing crypto assets and the conversions and ownership, these are going to be hot areas for what I consider consumer fraud ... [For example] someone bought a piece of property and there are misrepresentations regarding that sale."

"COMMUNICATE THE SCOPE OF RIGHTS TO PURCHASERS OF NFTS — WHETHER IT'S DRAFTING POINT-OF-SALE TERMS OR EMBEDDING THE LICENSE IN THE METADATA OF NFTS."



Advice on Crypto:

You may want to invest in crypto or have a client who does. If so, you may also be wondering, “How do I protect myself?” Well, you’re in luck, because Louis Lehot, a Silicon Valley-based partner at Foley & Lardner LLP who specializes in financial law and tech, has some insights to share:

1. Make Sure You Can Buy That Crypto

Not all cryptocurrencies are created equally and not all can be traded on the U.S. market. As Lehot explains, “To be traded in the States, cryptocurrencies must be commodities, not securities.”

If your crypto of choice is a security, you have to use another trading system. One suggestion: forming a corporation in the British Virgin Islands, which Lehot describes as “a well-known crypto-friendly jurisdiction.”

2. Know Where To Exchange It:

There are only a few money transmitters and crypto-exchanges in the U.S., the most established of which is Coinbase, a publicly traded company. “It’s embraced regulation and security as a culture, making it the leading crypto-exchange in the United States.”

There are also other exchanges for off-shore business, including Binance and FTX, which is currently trying to establish a well-regulated U.S. presence.

3. Can It Be Resold?

Just as you have to confirm you can buy the crypto, confirm you have a marketplace where you can sell it. “It is important to verify the regulatory status of a cryptocurrency to ensure that you are purchasing it legally, and therefore may resell it legally.”

Again, Coinbase is the most reliable one for non-security crypto and may be the [best legal technology](#) for risk-averse lawyers new to this world. Risk management comes in many forms, and it’s critical that you have the right [policies for your law firm](#) in place.

Get Breached. (Big Data in the Metaverse)

Big tech and the internet have basically turned us all into data-machines for their unquenchable algorithm factory. And it's gonna be soooo much worse in the metaverse. That's because advanced metaverse tech can capture and record far more intimate data than any keyboard.

For example, VR goggles know where you look, how long you look, and what emotion your eyes display when you look. As you can imagine, this raises some serious concerns about data.

“Each virtual interaction in the Metaverse exposes the very real human behind the avatar to cyber and privacy risks and creates a wealth of valuable and potentially relevant digital footprints in this new digital realm,” says Wendell Jisa, CEO of Reveal, an eDiscovery company.

III. Get Breached. (Big Data in the Metaverse)

Key Takeaways:

Metaverse-curious lawyers should follow this advice to mitigate data-related risks:

Catch Up on Contract Law: As analog-seeming as this may be, almost all our sources emphasized the absolute, incredible, awe-inspiring power of contract law in the metaverse. “I can’t emphasize enough how contract law is ultimately going to be super important in many different elements of the metaverse,” says Lynn Oberlander, of counsel at Ballard Spahr. “You want to be very specific about the rights that are granted or being granted, or you want to make sure that you are getting the broadest set of rights that you can.”

Team Cooley agrees: “Clear contracting will definitely be key to protecting everyone’s interests when it comes to the Web 3.0 ecosystem, and a key goal for all parties will be figuring out how to clearly communicate the various rights and restrictions to end users.”

Watch User Activity Like a Hawk: Okay, this is a bit more exciting. Paul Bond of Holland & Knight notes that in the metaverse, “Law firms may be less likely to detect insider threats without physical proximity, and because the analytic baseline for ‘normal’ user behavior is upended.” To prevent fraudulent activity on your or your clients’ accounts, consider user activity monitoring services or software.

Know Your Platform: Another contract law-related tip → review your platform, software, game, or metaverse service’s user agreements. For example, be sure they don’t have any tricky language saying business done on their platform belongs to them or that they own your avatar’s image. Bond notes, “The large platform providers of the metaverse may impose contractual terms on a take-it-or-leave-it basis, restricting due diligence by early adopter firms.”

And Alex Cox from Locke Lord said something similar: You need to know that “whoever is operating the metaverse is doing so within mutually understood parameters.” He goes on, “In short, [users] should be carefully considering exactly how the version of the metaverse they are interacting with operates before interacting, so they fully understand any potential risks.”



IV. It Knows When You're Sleeping-Privacy in the Metaverse

It Knows When You're Sleeping - Privacy in the Metaverse

Data and privacy go together like meat and potatoes. In this case, data's the potatoes and privacy is the meat, because there's going to be big ol' hunks of privacy-related issues in the metaverse.

"Any time a virtual environment is running somewhere, there is a group that has administrative privileges and can control that environment," says Locke Lord's Cox.

For Cox, this raises big questions, "Can there be privacy in a realm where a machine, or a single person behind that machine, can know everything about millions of people at once?"

IV. It Knows When You're Sleeping-Privacy in the Metaverse

Steven Cash, counsel at Day Pitney and a long-time tech enthusiast, has the same concerns: “Do you have any expectation of privacy in a virtual world when, by definition, the virtual world is being controlled, at least indirectly, by one or more other human beings who, within that virtual world, have omniscience, or at least the possibility of omniscience?” In such a place, is expectation of privacy still a benchmark for privacy rights? Or will privacy become a matter of personal choice — an “opt-in” for us all?

Meanwhile, complicating privacy debates, there's good ol' jurisdiction. Says Oberlander, “What country's laws apply in the metaverse are going to be very, very significant. International privacy regulations vary considerably from jurisdiction to jurisdiction, so I think that is going to end up being a very, very significant part of the ‘regulation’ of the metaverse.”

So, yeah, privacy's a huge concern in the metaverse, and lawyers are not immune.

“ASSUME THAT ALL OF WHAT YOU DO IS BEING RECORDED AND/OR WATCHED. IT PROBABLY ISN'T, BUT CERTAINLY COULD BE.”

Key Takeaways:

Protect your and your clients' privacy in the metaverse with these discreet tips:

“Can I See Your Credentials?” It will be harder than ever to authenticate randos in the metaverse. To avoid engaging with bad actors, consider a third-party authentication service.

“There are ways of protecting user privacy that provide both user anonymity and the ability to blindly verify a user as being authentic,” says Cox, who cites Apple's sign-in service as an example. “[The solution] will be a mix of tools and legal mechanisms.”

“Smile! You're On Camera”: Cash notes that lawyers in the metaverse should be discreet in the topics they discuss with one another or clients. “Assume that all of what you do is being recorded and/or watched. It probably isn't, but certainly could be.” Great! A whole new place and way to feel self-conscious. Isn't technology awesome?

V. The DL On IP: Intellectual Property in the Metaverse

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Intellectual property will likely be one of the most common and thorniest legal issues in the metaverse, and there are differing opinions on how existing IP laws may apply to this changing virtual world.

Jeanne Hamburg from Norris McLaughlin notes existing IP and copyright rules and laws will still apply.

“I don’t believe you could conceptually find that there was a different copyright owner just because the work was translated into [an NFT via code], because ultimately the purpose of that code is to embody expression that is originally owned by the author of the work.”

But that doesn’t mean existing rules will be able to neatly address every potential issue that may arise.

As the Cooley team put it: “Traditional intellectual property laws don’t necessarily map neatly into a lot of the key features of the metaverse ... so we’ll start to see parties working through how to interpret, apply, and potentially change traditional IP concepts for a better fit.”

V. The DL On IP: Intellectual Property in the Metaverse

In addition to debates over fair use in a creative space, they predict metaverse patents will be a legal hotbed, and ask this rhetorical question: “Do metaverse-specific inventions infringe non-metaverse-specific patents and vice versa?”

There’s also debate on whether companies need to expand their IP holdings. For example, Nike’s been trademarking various metaverse-related goods and services, but Julie Zerbo, the lawyer-editor of *The Fashion Law*, thinks these efforts are unnecessary.

“My inkling is that, because what we know of the ‘metaverse’ right now — it is a hyper immersive, hyper connected version of things that we already know, AKA e-commerce, social media, gaming — brands already have rights in many of these spaces. Nike already has rights by virtue of partnering with Xbox, so it has rights in its marks in the gaming world. It has rights in its marks in the digital world, by virtue of offering e-commerce for however long.”

Considering the uncertainty on IP in the metaverse, lawyers today can look forward to litigating and debating this issue for years to come. That may be a bummer, but think of it this way: Now you have a perennial excuse to get out of plans: “Sorry, thinking about IP!”

Key Takeaways:

Be Vigilant: Lawyers or firms who represent clients with IP concerns or IP on the internet need to be hyper-aware of potential infringements. As the Cooley team says, “[You] should be particularly cautious and consider building fail-safe mechanisms in the event that that end-user content is determined to infringe third-party IP, whether that means burning an individual NFT or removing the infringing content to which it links.”

Invite a Third: Third-party monitoring service, that is. They can be extremely helpful in scouring the digital worlds for violations of your and your clients’ IP. Says Oberlander: “Intellectual property protections and policing possible infringements is going to be a very significant part” of protecting IP in the metaverse.

Pick Your Battles: You know, sometimes in life you just gotta pick your battles. Sure, if you or your client has a legitimate claim and you can locate the offending party, you may have a case. If you or your client has a legitimate claim and it’s impossible to identify and locate the offending party — well, you may be S.O.L.

In other words, carefully weigh the time, money, and effort that goes into any IP lawsuit before wasting your efforts.

So On Trend!(?) Julie Zerbo, EIC of *The Fashion Law*, Shares Advice.

Here Julie Zerbo, the founder and editor of *The Fashion Law*, shares more thoughts on how lawyers and potential brand clients can function in the metaverse.

Advice for Lawyers Entering the Metaverse:

“I think lawyers should be paying attention to it because even if it isn’t the next big thing, there is a lot of room for lawyers to be giving legal advice and helping shape this space, because there is so much uncertainty from these early players in it, from a creator side.”

Advice for Brands Entering the Metaverse:

“Given that the majority of the users on these platforms are highly engaged Gen Z and maybe even soon Gen Alpha individuals, it’s a valuable opportunity to connect with these prized demographics that will one day be luxury goods consumers. It’s a way to meet, regardless of age, consumers, in many cases, where they already are.”

Is The Metaverse Just a Trend?

“Fashion is inherently trend driven. In many cases, those trends are quite fleeting. So worst case scenario, this is the equivalent of skinny jeans taking a hold for a really long time, and then ultimately getting put aside for wider leg pants, with brands making a ton of money in the process.” And lawyers, too.

My Avatar, Myself: Digital Defamation?

Another area ripe for debate, and potential lawsuits, is defamation in the metaverse. For example, what if some random avatar says that your client's avatar is a "baby-eating Hitler." Does your client have a defamation case?

The answer hinges on your avatar's relationship to your real-world identity, says Peter Raymond, a partner from Reed Smith and an expert in IP and commercial litigation: "Unless your avatar is known by the public or at least one or more other people, to be you, it wouldn't be the basis for a defamation claim."

Key Takeaways:

So, what if an AI-powered avatar removed from human control insults you? Are there grounds for a suit there? Probably not, because you'd have to prove "actual malice" if the client's a public figure, or "simple negligence" for a regular Joe, and either way, it's hard to prove either when dealing with an emotionless hard drive.

Further, while existing defamation and privacy laws apply in the metaverse, as with IP, the challenge of identifying and actually suing the offending party remains a huge hurdle: "You have to find the person who made the statement, but often the problem with the metaverse [is] you don't know who's behind it. They don't sign it, they do it anonymously, the website that's publishing it won't tell you."

Going through the trouble of subpoenaing the company and still coming up empty handed is a risk clients will have to take. So, the question comes down to picking battles.

Pick Your Battles (Again): While one can theoretically bring a defamation suit in the metaverse, just like on the internet, lawyers must educate their clients on the limits of defamation laws in the metaverse, because, as with the internet, finding anonymous users and holding them accountable may sometimes be more trouble, money, or publicity than it's worth.

Who Are You Really? (Define Your Identity): Are you prone to maniacal outbursts online? Is your client? Do you spout garbage insults often? Does your client? If you answered "yes" to any of these questions, 1) we recommend chill pills and 2) make sure your name isn't associated with your avatar. But, seriously, as Steven Cash from Day Pitney told us: "Remember that many (maybe not all) of the interactions in the metaverse are actually with real people. They have feelings, rights, emotions, and a real ability to take action in the real world." Acting out in the metaverse could be grounds for a malpractice suit against you. Are you prepared to expose your law firm to that type of risk?





This Lawyer Has a Metaverse Office — and You Can Too.



Richard Grungo, a New Jersey-based lawyer specializing in personal injury at the firm Grungo Colarulo, recently opened a virtual office in Decentraland. He first learned about the metaverse from his kids, who are into Roblox and other online realms, but Grungo ultimately took the plunge after hearing about Sotheby's Decentraland location. "I thought, 'Well, if Sotheby's could build a space there, I think a law firm can too!'"

Of his experience, Grungo said building the office was "cumbersome," even with his 11-year-old daughter's help, and admits researching crypto took a minute — "There are lots of conversions that need to be done to figure out whether or not this is the right time to purchase, and then there are fees associated with mining the currency."

But despite some headaches, Grungo's happy with his decision. He hasn't landed any new clients or anything, but to him, it's all about the long game: "This digital world really was born out of gaming, and those gamers are coming of age. We see this as an opportunity to strengthen our connection with that age group, or those people that are comfortable with this emerging technology."

Grungo also notes how digital spaces may make it easier to discuss emotional cases: "We handle a lot of tragic cases involving sensitive issues, including some sexual assault... A victim would feel a lot more comfortable meeting us with an avatar as opposed to having to look at us face to face and talk about some really, really disturbing event."

As for the future, Grungo's not sure what it holds. He admits, "This is a gamble. It's speculative because Decentraland could be the next Facebook or the next MySpace. We don't know." But, he goes on: "I truly believe that if your 2022 strategic plan and other long term plans, your five-year plan and your ten-year plan, do not include thoughts and discussions about the metaverse, you've got significant blind spots in your strategic planning."

Conclusion:

So there you have it, folks — some of the ins and outs and risks and opportunities for lawyers in the metaverse. Yes, there are lots of questions still to be answered, but that's the nature of the law: It evolves with the world around it. Or sometimes it doesn't. Either way, for lawyers today, the metaverse is at least worth investigating further.

As you do, we hope the above advice on [risk mitigation for your law firm](#) is useful to all your brave digital pioneers. And we also hope you find these final suggestions helpful, too.

Brush Up On Tech Law: Protect yourself from missteps by brushing up on basic tech law, including Stored Computer Communications Law and The Digital Millennium Copyright Act.

Are You Writing This Down?: While the digital realm's paperless, you should still take contemporaneous notes of your activities and conversations there. You may need them in the real world to prove facts. A variety of [legal technology](#) platforms and screen recording software can also help you keep track of your activity.

Lobby for Your Future: Well, you could also lobby for evil, if that's your thing, but we're assuming and hoping it's not. Either way, lawyers today who want to protect themselves tomorrow can play a role in shaping the rules and regulations around the metaverse. As Steven Cash notes: "There's going to be a need for lawyers to help legislators, to lobby them, to assist them, to test whether they have the authority to do what they're doing, and then to interpret those regulations."

Shape The Law With Your Bare Hands — and Brains: Questions about privacy in the metaverse will be top of mind for years to come. Lawyers today have an excellent opportunity to shape privacy laws and discussion for this new metaverse landscape.



Go Sloooow: Yeah, tech is changing at light-speed. You want to be a part of it. We get it. But just remember the phrase “fools rush in.” That applies in the metaverse, too.

Build an A-Team: If you’re a luddite but still want to find opportunity in the metaverse, avoid risky decisions by adding experts to your team. Paul Bond of Holland & Knight suggests, “Implement a metaverse risk control strategy that partners tech enthusiasm with seasoned caution. Get the right people and resources together for a balanced enterprise approach.” And Jeanne Hamburg said something similar: “In this area, if you’re not regularly reading up on and publishing and writing about these topics, it’s better to refer out than try to do it yourself because you have to be pretty fluent in it.” [Risk management for your law firm](#) should be the name of your metaverse game.

Have Excellent Insurance: Oh, come on. Did you think we’d forget that lawyers today need iron-clad, customizable insurance? “Examine insurance policies, declarations, and endorsements on offer to best understand how the insurance market is pricing the emerging risks,” said Bond.

So, yes: [professional liability](#), [cyber insurance](#), [fiduciary liability](#) — all those sexy insurances and others are adapting to the changing digital world. If you want to protect yourself, take a look to find an insurance plan that fits your business and needs best.

Give ’Em Something to Talk About: Lawyers looking to prevent falling behind in this field can also engage the metaverse via editorials, newsletters, Zoom conferences, or white papers. Whoa.... Meta...

To learn more about risk management for your law firm, speak with an Embroker representative today or simply get a quote online in minutes at [Embroker.com](#).