

# Deacons Bitesize IP

## Intellectual Property

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### Is the metaverse above the law?

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#### Did you know?

The term “metaverse” has been around for nearly 30 years. Although it was brought back into the spotlight by the re-branding of Facebook into Meta in 2021, it was actually coined by Neil Stephenson in his cyberpunk novel “Snow Crash”, published in 1992.

The metaverse is a virtual space that facilitates online interactions with other people, objects and places. There are many types of metaverse platforms and the design and functions of a virtual world will depend on its purpose, whether it is for allowing people to work, play, shop or socialise through their avatars in a shared space.

#### Why does this matter to you?

According to a recent report published by crypto investment firm Grayscale, the metaverse could represent a US\$1 trillion market opportunity. Businesses have already started exploring the profusion of opportunities in the metaverse to promote their brands, increase user engagement and deepen customer relations: Ralph Lauren launched an exclusive digital clothing collection as part of the Ralph Lauren Winter Escape, a holiday-themed branded world on the Roblox digital platform, and Nike has stepped up its investment in CryptoKicks, NFTs linked to trainers in both real and digital worlds. In April 2020, more than 12 million people attended a virtual concert headlined by the US rapper Travis Scott. International corporations and individuals have even been buying “virtual lands” to claim territorial sovereignty in the metaverse.

As tech giants such Microsoft, Meta (formerly Facebook) and Nvidia accelerate their construction of metaverse, legal regulation inevitably lags behind. The revolutionary nature of the metaverse gives rise to many complex legal questions: How can we regulate property rights in the metaverse? Are there any legal restrictions on the use of personal data and cross-border data transfer in virtual worlds? Who owns user-generated data in the metaverse? What happens if someone infringes intellectual property rights in the metaverse? How can rights be effectively enforced in a decentralised environment where even identifying the infringing party can be a challenge? Does an avatar have rights and obligations? How can consumers be protected in a virtual world? How can harmful content and activities be regulated? At the moment, there may seem to more questions than answers, and more issues are likely to emerge that no one can even foresee today.

However, there is a misconception that there are no laws in the metaverse. Whilst it is not unusual for there to be a regulatory vacuum when there is rapid development of an emerging technology, it is important to note that the metaverse is not above the law; existing regulations governing areas such as anti-money laundering, contracts, data protection, defamation, tort, gaming and gambling, intellectual property, tax and financial regulation, are already applicable to the metaverse. The metaverse will largely be regulated by existing internet laws and laws of the real world.

There is no doubt that the decentralised nature of Web 3.0 technology will make investigation of breaches and infringement, determination of applicable laws and jurisdictions, and enforcement of the law more difficult, as we have started to see in recent enforcement actions relating to the misuse of NFTs.

As always, the advent of disruptive technologies brings both challenges and opportunities. Although it is still in an early phase, the advantages of embracing the metaverse as the next generation internet will be great. Businesses and their advisers, governments and regulators need to focus on understanding how the different aspects of the metaverse are going to function as opposed to the status quo, in order to apply the law to novel situations, and develop the technology policy and legal infrastructure needed to encourage technological advances and protect the interests of the public and consumers at the same time.

## Want to know more?

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