

# Deacons Bitesize IP

## Intellectual Property

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### Virtual rights for virtual goods?

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#### Did you know?

The implied condition in a sale of goods contract that the goods supplied will be of “merchantable quality” may not apply to so-called “digital goods”.

In Hong Kong, there are various laws that provide protection for consumers by implying certain terms into contracts for the sale of goods. For example, if the contract contains no express terms as to the quality of the goods supplied, there is an implied condition under the Sale of Goods Ordinance that the goods sold are of “merchantable quality”. While this condition may be excluded by agreement in business-to-business contracts, it cannot be excluded by businesses when dealing with consumers.

However, the Sale of Goods Ordinance and many other consumer protection laws were enacted before the internet era, meaning that the law is unclear on whether it applies to “digital goods” such as music files and video games, where no tangible product is supplied. Case law on the meaning of “goods” in other common law jurisdictions suggests that such laws may apply only to physical, tangible goods. Legislation in those jurisdictions has stepped in to fill the gaps, but Hong Kong still lags behind, potentially leaving statutory consumer rights in the same state as that of digital goods: intangible and virtual.

#### Why does this matter to you?

If you buy a music album and receive a digital file, is this a purchase of digital goods? What if you listen to the same album on a streaming service? If you buy virtual sneakers for your metaverse avatar, is this a purchase of digital goods or just a part of the service provided by the metaverse operator? As purchasing habits increasingly move online or into the digital space, and especially with the rise in popularity of “metaverses”, the need for clarity and regulation in this area will become more and more apparent.

**Vendors** should have a clear idea of whether they intend to permanently “sell” or temporarily “license” their digital wares, and ideally, expressly set out their contractual obligations (such as warranties, refunds and exchange policies) to manage the legal uncertainty in this area.

**Buyers** should beware that consumer protection laws may not apply to such purchase, to instead review the terms of the contract they are entering into. They should purchase digital content from reputable companies with clear warranties, in order to avoid relying on and wading into a legal quagmire of statutory or common law implied terms.

### Want to know more?

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