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“THE INVISIBLE SCARS: LURKING THE DARK CORNERS OF METAVERSE GAMING REALM”

AUTHORED BY - TANU CHAUDHARY & JIYA SHARMA

Abstract

The rise of metaverses is bringing out revolutionary advancements in virtual reality: with these changes and frontiers to digital interchanges as well as what seems personal or social in interactions. Thus, a large scope of legal questions emerges concerning severe avatar interoperations-questions about the right implications on the nature of legal regulation and accountability around acts like virtual sexual harassment or virtual rape committed during any given game or series played inside any given virtual game world or online community. The nature of these platforms is immersive, and therefore, incidents within virtual spaces pose issues that are inadequately addressed by traditional legal frameworks. The present study advocates for a new juridical approach wherein avatars could be conferred an independent legal personality, much like the corporate veil concept in company law. This would allow the articulation of avatar rights and liabilities, thereby initiating an enforceable legal framework governing behaviour within the metaverse.

But, at the same time, it further argues that an organizational framework and a more developed set of internalized codes of conduct cannot wholly confront and respond to the emerging forms of risk. Therefore, adequate regulation will be required if users are to be made secure and protected within their digital space. This author further goes on to point out how stakeholders can intervene against digital harm by reconditioning present information technology policies through proper legal provisions which may involve stringent mechanisms from law. Ultimately, once society enters this uncharted virtual landscape, a full-scale legal revamp is called for to prevent the destruction of justice and order in this vast metaverse in the face of virtual malpractices becoming a new normalcy.

Mise en Scene

In a world of developing technology and games, there has emerged a new attraction, “The Metaverse”. A platform where the body and mind connect in a virtual simulation of the real world. Game enthusiasts in order to try these new developments, step into such a platform, completely unaware of the challenges that it can possess, which are unforeseeable on their behalf. Such an incident happened with Sofia. “YouVersion”, a Metaverse company, released a new game in the year 2023 where avatars of multiple players can play together in a simulation of the real world. Sofia used to play the game with her family as a team. On one unfortunate evening, Sofia was playing along with her team with some unknown gang when something unfaithful happened. A few avatars of the same gang sexually assaulted her avatar. She felt as if she has been gang raped in front of her family members. In order to raise awareness and protect the women in the Metaverse, she shared her experience on various social media platforms. She expressed her belief and the potential danger that is involved in such VR games.

Introduction

In a world of developing technology, Artificial Intelligence (AI) has emerged as one of the greatest attractions, easing the encumbrance of doing work. This evolution of Artificial Intelligence has been a remarkable journey, leading us to the brink of an era of gaming, the “Metaverse”. A platform where the body and mind connect, creating a neuro link, coined by Elon Musk, in a virtual simulation of the real world. Game enthusiasts in order to try these new developments, step into such platforms, completely unaware of the challenges that it can possess, which are unforeseeable on their behalf. This immersive platform allows users to create avatars and interact in a simulated world, blurring the lines between the physical and digital realms. Metaverse positively creates the possibilities of exploration, creation and connection, but also portrays a complex landscape of sensitive issues such as sexual harassment and rape.

The term Metaverse was first coined by Neal Stephenson in the year 1991 when he published his science fiction novel “Snow Crash”. In the book, characters use their avatars to explore the world and to escape a dismal reality. “Metaverse is a kind of global virtual reality in which people act as avatars. Similar to today’s multiplayer online role-playing games, there is no set game, goal or high score. Rather, the metaverse is designed as a digital alternative to the physical

world”.¹ The Metaverse combines two concepts, that is: Virtual Reality and Digital Second Life. It is a platform where a person can create his/her avatar and can enter, live and participate using Virtual Head Gear. In order for users to interact, it incorporates social media, cryptocurrencies, online gaming, etc. It can be considered as a future version of the internet. It also employs blockchain technology and allows users to purchase and sell virtual land and other digital assets with the help of cryptocurrencies. The active player currently in this field is “Meta”. They have already invested gigantic sums in the transfer and realignment of its social media activities into a virtual space. Marck Zuckerberg said;

*“We are at the beginning of the next chapter for the internet, and it’s the next chapter for us company too. The next platform will be even more immersive — an embodied internet where you’re in the experience, not just looking at it. We call this the Metaverse, and it will touch every product we build.”*²

As of now, there is no definition of Metaverse that is uniformly and universally used which poses significant challenges to address crimes in the Metaverse and to make the offender liable. But Ball has attempted to define the same using some key features, he defines Metaverse as –

*“It has to span the physical and virtual worlds; contain a fully-fledged economy; and offer unprecedented interoperability, i.e. users have to be able to take their avatars and goods from one place in the metaverse to another, no matter who runs that particular part of it. Critically, no one company will run the metaverse, i.e. it will be an ‘embodied internet’, operated by many different players in a decentralised way”.*³

The challenge associated with Metaverse and related crimes under its roof is the decentralization of multiple platforms which creates problems with respect to the jurisdiction. Additionally, the virtual nature of the same creates problems as to the extent of applying legal principles in order to make the offender liable and most importantly, specifying the exact agent to punish for the offence. The paper discusses such problems in great detail, and will be discussing the same in four heads: i) Data – which will emphasize the absence or lack of awareness on the part of common people about metaverse and crimes occurring within it, ii)

¹ Welcome to the Metaverse: An Introduction; https://blog.seeburger.com/welcome-to-the-metaverse-an-introduction/#_ftn5.

² What is the Metaverse; <https://medium.com/@whitekube/what-is-the-metaverse-61e6c6df7d81>.

³ Matthew Ball, “The Metaverse: What It Is, Where to Find it, Who Will Build It, and Fortnite” MatthewBall.vc (13 January 2020) (accessed 22 September 2021).

Juristic Personality – in order to attach the liability on the offender and on whom (agent) to attach the liability, iii) Jurisdiction – in case of dispute, who will be considered as the competent authority and state to address the matter and lastly, iv) Regulation – to suggest and recommend regulatory framework to counter such crimes within the metaverse. This will create and ensure a safe environment for the users of Metaverse of all age brackets to make the gaming platform more inclusive.

Metaverse, a parallel virtual world with the possibilities of exploration, creation, and connection, presents it optimistically. Still, the same creation of a unified virtual world seems to be inevitable as it enthrals a set of activities such as sexual harassment/assault and rape that has effaced the utopia portrayed by the metaverse. As a universal definition of Metaverse does not exist, this creates a grey area as to the crimes committed within the metaverse and how to resolve these ethical questions. In line with the same, the next problem concerns the attaching of liability with crimes committed within the metaverse concerning the juristic personality of the avatars and addressing the issue of jurisdiction across borders. The escalating frequency of crimes in the metaverse due to the grey areas in the juristic personality of the avatar and jurisdiction, the justice for the victims remains fragmented, echoing the need for a regulatory framework. This note proposes suggestions on regulation, attaching liability of the crimes committed and effective jurisdiction to try the matter and make the entity liable.

Hello, I'm an Avatar

An Avatar is the digital presentation of an individual in the digital world. The avatars can be 2D Avatars, 3D Avatars, Full Body Avatars, Leg-Less Avatars and VR Avatars. A Metaverse Avatar is an essential part of the user's experience in the metaverse, providing users with a sense of identity and a way to engage with others in a virtual environment.⁴ With the help of these Avatars, the users can show who they are in real life, can create a replica of themselves and also what they stand for by using these Avatars. Research has identified some psychological connections and/or processes and implications for users and their interactions with virtual environments. Earlier in video games, avatars did not have any bodily or psychological

⁴ The Era of Metaverse Avatars and Opportunities for Brands, <https://www.growthchain.io/blog/metaverse-avatars#:~:text=A%20metaverse%20avatar%20is%20an,games%20and%20other%20virtual%20events>.

connections to the users operating the same, however, due to the enhancement of technologies it is made possible to create realistic avatars by increasing the fidelity of their appearance and by synchronizing their motions and “consciousness” with that of the users. For example, user’s body movements and facial expressions are captured, in real time, and displayed at the same time by their avatars.⁵ Hence, Avatars in this sense can be elevated to even more crucial roles in the experiences.

The Rights, Liabilities and Duties of the Avatars will depend only when they are given some legal persona, and then only they can be accorded such titles. The crime that they may commit will fall under the purview of either Civil Law, Criminal Law or both. Let’s delve deep into the concept and see how such titles can be accorded to them.

Protecting Avatars' Rights in the Metaverse

Let’s suppose a situation where an avatar steals a digital “Mobile Phone”, this would include the issues of Theft, and property rights. In such a situation where theft has happened in the Metaverse, the same legal problem is not sufficiently substantive to raise a claim in a real court of law. As such cases involve players from all around the world and accommodate all the fora and locations, the International Law of Metaverse could be developed to deal with such issues. As stated by Mathew Ball Metaverse is decentralised, avatars could be incorporated from the existing company law principles and grant them legal persona in the same way the Companies are given the legal entity. Legal Personality can be granted to them through the process of registration and also confer the liability on the host controlling the avatar. Therefore, in order to confer rights and obligations on the avatars, legal personality must be accorded to them.

Types of Harm an Avatar can cause in the Metaverse

Real crimes are those that take place solely in the real world. Every state has civil laws that outline property rights as well as criminal laws that forbid violating these rights and specify the penalties for doing so.⁶ Sanctions encompass deterrence, rehabilitation, incapacitation, and

⁵ Avatar creation in the Metaverse: A focus on event expectations, <https://www.sciencedirect.com/science/article/pii/S0747563224000608>.

⁶ Ben Chester Cheong, “Avatars in the metaverse: potential legal issues and remedies” (2022), Int. Cybersecur. Law Rev. (2022) 3: 467–494, <https://doi.org/10.1365/s43439-022-00056-9>.

vengeance. In the metaverse, not all types of crimes that have been identified in the real world should be prosecuted because they do not cause any physical harm, and it is anticipated that psychological and emotional damages are anticipated to be the most prevalent kind of harm in the metaverse. For instance, voluntary intoxication in the bar and leading to harassment of the avatar can cause physical as well as mental harm in the real world, but in the metaverse, it may only be prosecuted for mental harm.⁷ As in the given present case, where Sofia along with her family playing YouVersion against a set of unknown players and later group approached and sexually abused her avatar, this might not lead to physical harm to Sofia, but it led to emotional damage and she felt that she through her avatar was gang raped.

In Roblox, a metaverse platform, an avatar of a child was gang raped by others in an online game. To prove Criminal Liability in the traditional law principles, it is important to fulfil all the ingredients:

- i) Mens Rea
- ii) Actus Reus
- iii) Causation
- iv) Harm

Which is sometimes difficult to prove in the real world as well.

Besides this, an avatar can cause and include various crimes, such as Fraud, Theft, Identity Theft, Defamation etc.

Legal frameworks must be designed to address possible breaches of privacy and consent. This might include granting a separate legal personality to avatars, making them accountable for their acts in the metaverse.⁸ If avatars in virtual spaces may operate independently of humans, then avatars in the metaverse are completely autonomous entities. If avatars can conduct transactions in the metaverse, they should be granted rights and obligations leading to the rights to use or be sued. A new metaverse law covering copyright, harassment, rape, murder, and other

⁷ Susan Brenner, "Fantasy Crime: The Role of Criminal Law in Virtual Worlds" (2008) 11(1) Vanderbilt Journal of Entertainment and Technology Law 1, 61–70.

⁸ S. M. Solaiman, "Legal personality of robots, corporations, idols, and chimpanzees: a quest for legitimacy" (2017) 25 (2) Artificial Intelligence and Law 155–179.

topics could be developed and ratified by an international community without country-specific boundaries.⁹ Companies may serve as a paradigm for granting rights to avatars in a metaverse. Avatars, like corporations, are non-human entities that may drive economic investment in the marketplace. To enhance productivity, avatars should have the same rights and obligations as enterprises.¹⁰

In the present case study, the major crime that was committed by the gang of avatars on Sofia was that of Sexual Assault. The crime committed by them was Criminal in nature.

Legal Issues arising in the Case Study

In such cases, the natural persons use the avatar to commit certain crimes in the virtual world. The commission or omission is such that it could directly affect the person's mind and emotions due to the neural link that is present between the natural person and the Virtual Reality Gear. That is, between the brain and his/her avatar in the metaverse.

In the present case, the following are the Legal Issues that I think would arise against the conduct of the Avatar gang: -

i) Digital Harassment/Assault

Whether the actions of the unknown players constitute a form of harassment or assault in the real world?

The actions of the avatar gang against Sofia can mirror the same to the real world by creating a threatening environment for her. As discussed earlier there is a "neural connection" between the brain and the virtual world, that could definitely hamper the psychological condition of Sofia in real life. The same is going to be with her for the rest of her life due to the immersive nature of VR. Case: British authorities are grappling with the investigation of an alleged gang rape that occurred within the realm of a virtual reality (VR) game, the New York Post reported. The victim, a girl under 16, was wearing a VR headset, immersed in a game where her animated avatar was subject to a virtual assault by several men. Although physically unharmed, the victim

⁹ Marc Andrew Spooner, "Comment, It's Not a Game Anymore, Or Is It?: Virtual Worlds, Virtual Lives, and the Modern (Mis)Statement of the Virtual Law Imperative" (2012) 10(2) University of St. Thomas Law Journal 533–578.

¹⁰ Tiffany Day, "Avatar Rights in a Constitutionless World" (2009) 32(1) Hastings Communications and Entertainment Law Journal 137, 150.

may have experienced psychological trauma akin to a real-life assault, shedding light on the potential emotional repercussions of metaverse crimes.¹¹

ii) Privacy Rights

Was Sofia's virtual experience a violation of her privacy within the metaverse platform?

The privacy-related issues in the Metaverse are still evolving. There are issues of data privacy in the Metaverse such as lack of privacy regulations, data collection and users' data rights and ownership. Metaverse is a bridge between the online and offline life of the user, any mishap in the online world can have direct or indirect repercussions in the real world.¹² Online stripping and harassment are indeed violations of a person's right to privacy. As Metaverse is a costume party with identity anonymity or different auras, it can amplify the security breach. Hence, robust security measures are more crucial than ever.

iii) Duty of Care

Does YouVersion, as the game developer, have a responsibility to ensure a safe virtual environment for its users?

It is the duty of the game developer YouVersion as a business to ensure the safety of its users. When it comes to the policies that govern the relationship between technology use and the physical and mental health of children, the most effective laws are based on data from robust, longitudinal research. Companies need to continuously assess and reassess safety features in the metaverse. New features need to be developed and tweaked to prevent malicious behaviour and released with increased frequency to ensure families' safety.¹³ It is the duty of the Government, Regulators and Industry to create a safe environment for children and adults to experience surroundings free from any intervention or infringement of their rights.

¹¹ Virtual gang rape reported in the Metaverse; probe underway, <https://www.thehindu.com/sci-tech/technology/virtual-gang-rape-reported-in-the-metaverse-probe-underway/article67705164.ece>.

¹² The Metaverse Dilemma: Privacy Concerns In Virtual Worlds, <https://www.forbes.com/sites/forbestechcouncil/2023/10/23/the-metaverse-dilemma-privacy-concerns-in-virtual-worlds/?sh=41c87ec017a3>.

¹³ Safely Navigating the Rise of the Metaverse, <https://www.fosi.org/good-digital-parenting/safely-navigating-the-rise-of-the-metaverse#:~:text=Responsibility%20lies%20with%20the%20government,productive%20for%20children%20and%20families>.

iv) Jurisdiction and Legal Precedent

Whether the existing laws under the Indian Territory will be applicable in case of such breach and what will be the jurisdiction which will be applied?

Metaverse will have transnational issues as it involves users from all around the world. Essentially, real-life laws would apply to these types of cases and concerning territorial jurisdiction. These states would have the jurisdiction to deal with any matters that arise within their country. Another principle under territorial jurisdiction is the nationality principle. This covers any legal issues that are committed by nationals of that country, even if they are not physically situated in said country. The passive personality principle however operates in the opposite.¹⁴

Laws Applicable in Such Legal Issues

Recently, a similar case to the present case has been filed in the United Kingdom, where a young girl under the age of sixteen was sexually assaulted by a group of adult men in an immersive video game. Significant psychological trauma similar to that which would have resulted from a physical assault is said to have been caused by that encounter. This emphasizes a key feature of virtual reality technologies: its immersive design, which creates a very lifelike virtual environment for users to experience. It is important to acknowledge the profound psychological effects of virtual experiences, particularly those that entail violent or traumatic incidents.¹⁵

Coming up to the applicability of the present laws in this particular scenario, the United Kingdom came up with the Online Safety Act OF 2023, a positive step forward, but it is only the beginning. Designing rules that safeguard users in virtual environments, requires a multidisciplinary strategy that includes legislators, tech companies, psychologists, and civil society. They evaluated a "virtual rape" offence, the fundamental question that arose is whether the criminal and the victim must physically contact. This problem would arise if the victim

¹⁴ The Metaverse and the Legal Jurisdiction, <https://www.richardweechambers.com/the-metaverse-and-legal-jurisdiction/>.

¹⁵ Alice Trotter and Nicola Finnerty, "Policing the metaverse: the reality of virtual sexual offenses", 2024, <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/policing-the-metaverse-the-reality-of-virtual-sexual-offences#page=1>, Kingsley Napley.

claimed sexual assault by penetration or sexual assault. Despite considerable technological advances in virtual reality software, it cannot be legally claimed that anybody is physically touching in the metaverse. It is extremely doubtful that laws defining sexual offences could be applied in their literal sense to situations where the relevant behaviour is claimed to have happened in a virtual context.¹⁶

In the context of India, The Indian Penal Code and the Information Technology Act are two pieces of current legislation that address online harassment to some extent. Sexual harassment in virtual rape can be deemed a criminal offence committed using a very specialized electronic medium, i.e., virtual rape, and so is a subset of online harassment that can be prosecuted under the IPC and IT Act. Though the IPC does not specifically criminalize internet harassment against women, it does prohibit it under Sections 354D and 509, which deal with stalking and insulting a woman's modesty, respectively.¹⁷

Since the IT Act 2000 is specialized legislation pertaining to technology and electronic communication, offences committed in virtual reality may fall under its jurisdiction. Concerning the instant case, Section 66E addresses invasions of privacy by sending, capturing, and publishing images of people's intimate areas. This area can be used by victims of privacy abuses to seek protection, as the metaverse operates on the same principle as any other communication medium: the exchange of information and data by linking individuals worldwide.

i) Virtual Rape/Sexual Assault

“The concept of the Metaverse continues to captivate our imaginations, recent technological advancements, such as those pioneered by Elon Musk's Neuralink, further blur the boundaries between the virtual and physical worlds. Neuralink's recent demonstration of a monkey using an implanted brain chip to play a video game solely through thought showcases the remarkable

¹⁶ Alice Trotter and Nicola Finnerty, “Policing the metaverse: the reality of virtual sexual offenses”, 2024, <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/policing-the-metaverse-the-reality-of-virtual-sexual-offences#page=1>, Kingsley Napley.

¹⁷ Harsh Agrawal and Rashi Jain, ‘Expounding the Contours of Sexual Harassment in Virtual Reality: Applicability of the Penal Laws to State-of-the-Art Technology (Part 2)’ (The RMLNLU Law Review Blog, 24 May 2022) <https://rmlnlulawreview.com/2022/05/24/metaverse-2/%3E%C2%A0>.

potential of brain-computer interfaces.”¹⁸

In the present case, the laws applicable would be that of the Indian Penal Code, 1860 and The Information and Technology Act, 2000. To substantiate my stance, there is a case referring to the same:

Case: State of West Bengal v. Animesh Boxi¹⁹

(“The court convicted the accused under various sections of the IPC and IT Act recognizing that the victim endured not only online stalking but also suffered from 'virtual rape' each time the video uploaded by the accused was viewed on an openly accessible global website. Referencing Justice Stephen Breyer's words from the US Supreme Court, the court emphasized the necessity for a judicial system that embraces scientific advancements. "In this age of science, science should expect to find a warm welcome, perhaps a permanent home, in our courtrooms... Our decisions should reflect a proper scientific and technical understanding so that the law can respond to the needs of the public.") Hence, in this case, a wider interpretation to the laws was given diligence.

ii) Privacy Rights

In cases of breach of privacy rights, The Digital Personal Data Protection Act, of 2023 can be applied. “For example, the Digital Personal Data Protection Act, 2023 (DPDP) that will govern how data is collected, processed and shared, already offers an exhaustive and adaptable framework, independently of the technology used, for the collection and processing of personal data that will happen in the metaverse.”²⁰ Hence, all the information that is being collected by such companies will have to conform to the procedure as to how the data is to be collected by being a Data Fiduciary. In addition to this, there are certain EU laws that can be applied in case of a non-liquet situation in the domestic laws, such as:

¹⁸ AI-Powered Justice: Safeguarding Against Sexual Offences in the Metaverse, <https://www.livelaw.in/lawschool/articles/ai-powered-justice-metaverse-dynamics-sexual-harassment-influence-of-ai-on-crime-legal-protection-assessing-gaps-and-solutions-250671>.

¹⁹ State of West Bengal v. Animesh Boxi, 2018 SCC OnLine Cal 1234.

²⁰ Meta's Response to Chapter 4 of TRAI's Consultation Paper on Digital Transformation through 5G Ecosystem, https://www.trai.gov.in/sites/default/files/META_23012024.pdf.

GENERAL DATA PROTECTION REGULATION 2018

The GDPR creates a system of protection by design and by default which must be applied to all data processing and, by extension, to all technologies that handle personal data. The current EU law should serve as the foundation to solve the majority of the privacy protection issues that the metaverse will uncover while making adjustments as the technology involved and the metaverses themselves advance.

EU'S DIGITAL SERVICES ACT 2022

In order to verify that the collecting and processing of biometric data on the Metaverse complies with EU requirements, DSA would be used in conjunction with the GDPR. Due to the great opportunities for targeted advertising created by the aforementioned gathering of biometric data, DSA will play a critical role.

EU'S PROPOSED AI REGULATIONS 2021

The European Commission has released a proposal for an AI Regulation. Many human interactions in the Metaverse may be made possible by artificial intelligence. Some AI-related technologies would be outlawed, and both AI providers and consumers would have to abide by new regulations relating to high-risk AI systems as well as transparency requirements.²¹

iii) Jurisdiction and Legal Precedent

It is very evident that the jurisdiction and legal precedent is still evolving and is navigating its way to find a way to file suit in a court of law. It includes various factors upon which the jurisdiction is concerned as firstly it connects the online world and real world and secondly, it accommodates users from all over the world. Hence, it becomes complex to set a particular jurisdiction. Still, there are some laws applicable beyond India, which can be taken into reference: “For example, the Brussels Regulation (Regulation (EU) No 1215/2012) in the European Union and the Federal Courts Jurisdiction and Venue Clarification Act of 2011 in the United States provide rules for determining jurisdiction in cross-border disputes. Additionally, the Convention on Cybercrime (also known as the Budapest Convention), adopted by the Council of Europe, provides a framework for international cooperation in investigating and

²¹ Privacy in the Metaverse; Pg.5, <https://tsaaro.com/wp-content/uploads/2023/02/Privacy-in-the-Metaverse-1.pdf>.

prosecuting cybercrime.

A specific example of the jurisdiction in the metaverse is the *Case of Bragg v. Linden Research, Inc.* In this case, the U.S. District Court for the Eastern District of Pennsylvania had to determine whether it had jurisdiction over a dispute involving virtual property in the online world of Second Life. The court found that it did have jurisdiction over the case, as the parties were located in different states, and the virtual property at issue had a monetary value.”²²

iv) Terms of Service

This principle of “Terms of Service” is essential in creating a boundary within which all the company’s doing business in the Metaverse have to follow the community guidelines. This principle is used by many companies that operate in the virtual world, like – Roblox, Minecraft, Second Life and World of Warcraft. These Agreements help in outlining the rules and regulations for using the virtual worlds, and the rights and responsibilities of both the Company and the Users.

“World of Warcraft, the terms of service prohibit cheating, hacking, and sharing personal information, it also includes a code of conduct which specifies that players should not engage in hate speech or harassment of other players.” “Terms of Service for Second Life prohibit certain types of behaviour, such as harassment, hate speech, and the sharing of personal information.”²³

Granting Rights to the Avatars in the Metaverse

We can grant Rights to the avatars in the Metaverse just as a human being has in order to assign them the benefits enjoyed by humans and to protect them from violation. In order to grant rights

²² Navigating the Metaverse Business and Legal Challenges: Intellectual Property, Privacy, and Jurisdiction, Pg. 3, D. Jurisdiction, <https://dergipark.org.tr/en/download/article-file/2901353#:~:text=Jurisdiction%20in%20the%20metaverse%20can%20be%20complex%2C%20as%20virtual%20worlds,35%5D%2C%20%5B36%5D.>

²³ Navigating the Metaverse Business and Legal Challenges: Intellectual Property, Privacy, and Jurisdiction, Pg. 4, F. Terms of Service, <https://dergipark.org.tr/en/download/article-file/2901353#:~:text=Jurisdiction%20in%20the%20metaverse%20can%20be%20complex%2C%20as%20virtual%20worlds,35%5D%2C%20%5B36%5D.>

to the avatars, we must understand what are the essentials of a human being in order to grant them Rights. It is “Conscience”. If an avatar can think on its own, that is so because it is connected to a human host and because of the neural link, it can be said that the avatars have the conscience to not harm others and if harmed then resolve the same.

But only conscience is not enough to grant the avatars rights. Hence, avatars should be incorporated like companies to grant them separate legal identities. This can be done through Registration of the avatars, and for it to work, all the ecosystems that is responsible for the existence of the Metaverse should also be registered.

If the avatars in the Metaverse is able to operate independently without any human or AI intervention, then we can say that the avatars have a separate legal personality. If the avatars can perform the tasks independently, then they should be granted separate legal personalities to get rights and obligations.

To substantiate the incorporation of avatars just like companies have been there is a case law. “For example, it had been established by the US Supreme Court that corporations were persons under the 14th Amendment to the US Constitution, and thus entitled to protection of the due process clause in *Minneapolis & S.L.R. Co. v Beckwith*²⁴. Even though the corporate form is not a human person, companies are endowed with similar rights that an ordinary citizen possesses. Within the meaning of the US Constitution and Bill of Rights, corporations are ‘persons’ and are entitled to protection against the taking of their property without due process and are entitled (at least to some extent) to freedom of speech. Companies can act as persons where it involves legal proceedings, ownership of property and contractual obligations.”²⁵

Even after granting them the legal personality, there will be certain limitations as to when and whom to sue. Even after their rights and legal personality, they are still being controlled by the human host and hence there will be a distinction between human agents and artificial entities.

If legal personality is accorded to the avatars, then there are certain duties and obligations

²⁴ Minneapolis & St. Louis Railway Co. v. Beckwith, 129 U.S. 26 (1889).

²⁵ <https://doi.org/10.1365/s43439-022-00056-9> Int. Cybersecur. Law Rev. (2022) 3:467–494.

imposed on both the avatars and the company, to follow the rules and regulations of the metaverse and to follow the community guidelines and data protection laws, respectively. And if there is non-performance of any of the duties or obligations then the same should attract liability.

In the present case, if the avatars were to grant the legal personality as that of human beings, then they can claim rights. It is the right of Sofia to not get harmed or violated by others' actions and the rights of the avatar gang to exhaust their right in a limited way. It is the duty of the avatars and the company to protect the rights of the users by following the rules of the metaverse and community guidelines respectively. In the present case, there is non-performance of both and hence it will attract liability of sexual assault by the avatars and no duty of care by the company.

Still, granting them legal personality is still a continuing debate and as the technology evolves, the debate will be more intense and interesting.

Need to enact new Laws and how to handle Sexual Assault & Rape

It is very pertinent to note that the act committed against Sofia should attract liability even though the same happened in Metaverse as it can cause psychological distress to Sofia. Sofia can do certain acts to handle the situation the moment it occurred, that is – report the incident to the company; conduct of investigation; explore legal action and ask for policy developments. Author Joshua Hanson states that – “as the boundaries between reality and virtual reality are blurred, a user can develop psychological responses to an attack on their virtual body as if it were their own.”²⁶

“The case of the *Free Speech Coalition v. Reno (1999)*²⁷ involved an adult sending explicit content over an online platform to a minor, and one of the main facets of the case was whether the accused party was guilty of sexual misconduct against a child, as the offender was not technically physically abusing the child. It is relevant to this argument for legal additions to the

²⁶ Hansen, Joshua. June, 2019. “Virtual Indecent Assault: Time for the Criminal Law to Enter the Realm of Virtual Reality.” Victoria University of Wellington Law Review.

²⁷ Free Speech Coalition v. Reno, 198 F.3d 1083 (9th Cir. 1999).

aforementioned definitions because the Child Pornography Prevention Act of 1996 (CPPA) was one of the first attempts to criminalize inappropriate sexual behaviour regarding non-human entities that directly resembled real people on an internet-based platform, and was used to argue this point within the case.”²⁸

"Concerning the protection of minors and observance of public morals, it is an important demand to have a strict policy that would enforce ID verification and regulation in accessing metaverse platforms meant for adults, aged 18 years old and above. This would prevent unlawful access of minors to harmful content, ensuring standards in their legal obligations as well as the ethical aspects."

With all these cases and statements given, it is very evident that laws relating to Metaverse should be there that would be universally applicable. The same laws should be applicable only inside the Metaverse and should govern the conduct inside. This can include blocking the Avatar, creating a bubble and Hubble situation or putting the avatar in jail. **“To create a comprehensive legal framework for the Metaverse**, the ‘analogue era legislation’ should be used as a foundation for developing the **Grand Charter of Laws Metaverse**. This **Charter** should incorporate the Constitution, common law, and judiciary structures that promote democratic and legitimate functioning within the Metaverse. This would ensure that the freedoms and rights of all Meta-citizens are respected and protected.”²⁹

Furthermore, it is already common for criminals to exploit avatars to help them create fraudulent accounts and move money unlawfully. Crimes against the avatars, such as harassment, rape, stalking, in-game scams, cheating, and impersonating a real person, have taken place.³⁰ Crimes against the state, such as distributing illegal information or upsetting public peace and order, will also be prosecuted in state courts. But as of right now, neither state nor federal laws specifically address the metaverse. Game creators generally use a hierarchy of in-game sanctions, starting with a warning and progressing to account deletion. Closing and reporting an account, might have major consequences, including losing any virtual assets.

²⁸ Crimes and Criminal Procedure, 18 U.S.C. § 2246(2-3).

²⁹ O. Kostenko, V. Furashev, D. Zhuravlov, and O. Dnirov, ‘Genesis of Legal Regulation Web and the Model of the Electronic Jurisdiction of the Metaverse’, *Brat. L. Rev.*, vol. 6, no. 2, pp. 21–36, Dec. 2022, doi: 10.46282/blr.2022.6.2.316.

³⁰ Susan Brenner, “Fantasy Crime: The Role of Criminal Law in Virtual Worlds” (2008) 11(1) *Vanderbilt Journal of Entertainment and Technology Law* 1, 27.

Even in the present case of the unknown group who had sexually abused Sofia, if the accused are from different countries, having different laws. It would be inconsistent with the idea of a decentralized, democratic government structure for the metaverse to provide all regulatory authority to a select few. This would lead to enforcing international laws that are to be ratified by the states. Hence, a special law for the metaverse should be there and also the freedom of the human host to knock the doors of the court of law to get redressal for the mental agony caused to them.

Conclusion

Virtual reality's next frontier, the metaverse, is a quickly developing digital environment that might fundamentally change how people interact with digital material and with one another. The interaction of avatars in the metaverse led to the implementation of legal rules and regulations. It highlights that, although it's not a perfect solution, the corporation's legal framework may be one of the many laws mentioned to address the problem of avatar rights and responsibilities in the metaverse. This would begin the process of identifying and addressing the many rights and associated liabilities that an avatar may have in the metaverse by incorporating it and giving it an independent legal personality of the same quality as the corporate veil in company law.³¹ With a new era of digital contact approaching, the example of virtual rape in the metaverse serves as a sobering warning of the risks that may be present in these unexplored areas. To control the codes upon which the Metaverse will be built, the law must become more robust. In short, the law will completely supersede the ideas that underpin Metaverse.

³¹ Ben Chester Cheong, "Avatars in the metaverse: potential legal issues and remedies" (2022), Int. Cybersecur. Law Rev. (2022) 3: 467–494, <https://doi.org/10.1365/s43439-022-00056-9>.