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# **Marketing in Metaverse and the accompanying IP issues**

Authored By-Krishnadev K

## **What Is Metaverse ?**

Metaverse in the broadest sense can be described as a Virtual 3D Space in which a person can move freely, interact with others and express themselves. There are many definitions to what is metaverse. The concept of what is metaverse is not a restrictive one but rather of encompassing nature. Therefore, Metaverse would include virtual spaces where people work alongside each other, where people play adventure games in an interactive 3D world with their friends or other real people through the games and more. It could be defined simply as a 3D virtual world in which people could socialize, play and work.

Some of the companies developing metaverse are Microsoft, Meta previously known as Facebook, Nvidia and more.

Microsoft is currently developing a metaverse platform called Mesh which is primarily designed for work will let you replace your video presence with an avatar, create virtual rooms, and implement 3D spaces in Teams. Meta's metaverse is aimed at social interactions and social media.

There are Several arguments for and against a future based of metaverse but as the metaverse is still in its early stages of development we cannot conclusively rule that these arguments are true or false apart from a few proven ones. A Proven benefit of metaverse is in the Education and training sector. Metaverse has benefitted US army that the training period for repairing their helicopters has reduced from 18 weeks to 10 weeks. Infosys had collaborated with a pharmaceutical company to create a digital twin of their vaccine lab enabling them to assess critical data to make predictions and decisions. There are opportunities across industries for Metaverse implementation. Evidently, Higher education, medical, military and other types of trades will deliver a more immersive learning experience. They would be able to take advantage of the framework provided within the Metaverse. Retail can expand their market by providing an Immersive Shopping Experience through Metaverse. Enterprises can achieve better engagement, collaboration and connection with their employees through virtually augmented workspaces. Social media could move to the Metaverse, where users may interact through three-dimensional

avatars which may become a highly valued component.<sup>1</sup>

Marketing has also evolved in the Metaverse. Coca Cola had hosted concerts in the metaverse starring Ava Maxx as part of its marketing for a metaverse drink. Warner Bros had offered a virtual rendition of the Washington Heights Neighborhood in promotion of their movie “In the Heights”.<sup>2</sup> Most Recently, Yashoda Hospitals Group from Hyderabad acquired a parcel of land on the Metaverse platform “Decentraland” to commemorate its 30+ years of healthcare services.<sup>3</sup> Union Bank has also entered into a partnership with Tech Mahindra to Launch a “Metaverse Lounge”.<sup>4</sup>

Videogame Fortnite had hosted a concert by Travis Scott which saw the attendance of millions of avatars and the concert was described by Forbes as “A Stunning Spectacle and A Glimpse at The Metaverse”.

Therefore, it is no stretch of Imagination to say that Metaverse will play a major role in the future as it evolves. Citi has estimated in its report titled “Metaverse and Money, Decrypting the Future” that the Metaverse economy could be worth up to \$13 Trillion by 2030 from the Current value of \$8 Trillion.<sup>5</sup>

## **A Decentralised Metaverse**

Currently, it seems that the metaverse can be built on two different foundations:

One that is centralized and controlled by giant corporations such as Meta or one that is decentralized and controlled by the people who will inhabit the metaverse. A Centralised Metaverse will involve a single entity governing the entire network. The Community can interact together and share experiences, but they don't have the freedom to control or own pieces of the digital environment. The Virtual community in centralised environments, such as Fortnite and Roblox, lives within the confines of a centrally controlled space, and users are restricted within those parameters. An example of Centralised metaverse would be Meta owned Metaverse which is still under development.<sup>6</sup>

A Decentralised metaverse would mean that the users would have the freedom to control their

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<sup>1</sup> <https://www.gartner.com/en/articles/what-is-a-metaverse/>

<sup>2</sup> <https://influencermarketinghub.com/metaverse-marketing/>

<sup>3</sup> <https://www.financialexpress.com/healthcare/healthtech/yashoda-hospitals-hyderabad-becomes-first-healthcare-group-in-india-to-be-on-metaverse/2563783/>

<sup>4</sup> <https://www.mahindra.com/news-room/press-release/tech-mahindra-partners-with-union-bank-of-india-to-launch-indias-first-psu-metaverse-lounge-uni-verse>

<sup>5</sup> [https://icg.citi.com/icghome/what-we-think/citigps/insights/metaverse-and-money\\_20220330](https://icg.citi.com/icghome/what-we-think/citigps/insights/metaverse-and-money_20220330)

<sup>6</sup> <https://www.ledger.com/academy/your-guide-to-the-metaverse>

own experience almost entirely. The control of the platform lies within the community (rather than one central authority) i.e. it will be governed by users; meaning they have a lot more individual control over not just their own individual assets, but over the way the Metaverse itself is built and operates. The decentralized Metaverse is emerging hand-in-hand with blockchain projects. An Example of decentralized Metaverse would be Decentraland.

A Big criticism of a Centralized metaverse is that it would be a Data harvesting center especially more than the current Internet as metaverse is also aimed to read and learn about our rooms, facial expressions, movements and more. Skeptics believe that the data is most likely to be abused by corporations with the current news of Cambridge-Analytica Scandal.

Decentralised metaverse would address the privacy and data protection problems with Blockchain technology unlike the centralized metaverse. Several Metaverses have taken advantage of blockchain technology to deliver user-owned experiences that are resistant to censorship and interoperable with one another. For Example, Decentraland is a fully decentralized world on the Ethereum blockchain, managed by a Decentralized Autonomous Organization (DAO) made up of individual players who may vote to change the policies that govern how the world operates. Decentraland has its own cryptocurrency, MANA which can be freely traded on cryptocurrency exchanges for other currencies. These Virtual reality universes tokenise in-game assets and land parcels to give players the ultimate control over the world they inhabit and help create—the same control they enjoy over their real-world possessions.<sup>7</sup>

These metaverses are already seeing a land grab by the individuals and corporations. Renting plots of land and virtual Infrastructure where events can be hosted and renting of digital billboards in the metaverse are already underway.

## **Practical Applications Of Metaverse**

There are Several Applications of Metaverse some of which include Improved Business operations, Enhanced customer experience among more. Implementation of Metaverse by companies could improve several aspects of their Business. Moreover, there are benefits of metaverse which cannot be listed as the evolution of metaverse is still at a nascent stage and those can only be discovered with time. Some of the Relevant Applications of metaverse include

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<sup>7</sup> <https://blog.alleninteractions.com/the-foundation-of-the-metaverse-centralization-versus-decentralization>

**Improved Business Operations:** The Metaverse should deliver a much more immersive experience to operations workers who should be able to use the technology to guide even the most complex field and service work, and be able to coordinate more fully with others.

**Improved Education and Training:** As Mentioned Before, US Army has adopted metaverse in imparting training to their new recruits and has been able to shorten the training duration from 18 weeks to 10 weeks.

**Advertising, branding and marketing opportunities:** Several Companies have taken to metaverse to establish their presence in the metaverse and to establish themselves as “Digital and Tech-savvy”. As Mentioned, Companies have begun grabbing land to hosting concerts in the Metaverse whereas Disney have begun projects to branding their own Metaverse Projects and envisions that physical and digital world shall converge.

**Work Meetings:** Tech Companies are looking to develop metaverse as the place for Virtual work meetings. This would mean that Virtual meetings will move from 2D to 3D Space with Digital Avatars. Bill Gates states that the idea is to replicate the feeling of being in an actual room with them. Critics say that the VR meetings would be less enticing than Zoom Meetings where people can still do real world things such as drinking coffee.<sup>8</sup>

## **Legal Issues Surrounding Metaverse**

The Introduction of Metaverse would cause several legal challenges which cannot be resolved at the moment simply because our laws and regulation have not evolved yet to include the vast scope of metaverse and the crimes and violations that could occur inside it. As of now, the GDPR nor IT act addresses the entirety of the scope of Metaverse. The Concerns regarding Metaverse are Multifold and only Ever-growing. There have been incidents which vary from IP infringement suits to reports of Rape in the metaverse owned by Meta.

### **IP Infringement Issues**

As there is an increasing presence of metaverse and more companies joining metaverse for their marketing and sale of their virtual products, it becomes necessary to develop remedies for the owner incase their IP rights have been infringed. Intellectual property issues are particularly relevant since the Metaverse encapsulates a range of technologies, literary and artistic works, designs, logos, symbols and imagery, most of which have historically been protected under intellectual property law regimes.

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<sup>8</sup> <https://www.techtarget.com/searchcio/feature/Examples-of-the-metaverse-for-business-and-IT-leaders>

In Another Incident in Second Life the gist of the copyright dispute between the parties is whether Plaintiff's virtual horses infringe on copyrights associated with Defendant's virtual bunnies. The Ozimals Incorporated produces "breedable" animals within Second Life, and contend that a competing company, Amaretto Ranch Breedables, was infringing on their copyrights. Ozimals insists that it's not claiming copyright on all breedable animals, but that Amaretto directly copied its expression. Amaretto filed for a restraining order with the prayer to prevent Second Life from taking down their animals via a DMCA notice from Ozimals. The court agreed, and has barred Second Life from taking down the content.<sup>9</sup>

In January 2022, French fashion house Hermès sued a Non-Fungible Token (NFT) creator Mason Rothschild, who marketed a line of digital assets called "Metabirkins," digital duplications of the Birkin bag created by Hermès . Hermès alleged trademark infringement and dilutive use of the Birkin name.

The Practice of IP in Metaverse would involve questions of jurisdiction, territoriality, and conflicts of laws, none of which have been neatly resolved for even the current iteration of the internet let alone fully realized virtual worlds with an even greater degree of interaction and user immersion.

There is a lot of dispute and confusion regarding how IP law should be applied to the Metaverse. The Administrators of the estate of Indian artist MF Husain disputed TamarindArt LLC's ability to proceed with a project involving the sale of NFTs based on Husain's painting titled "Lightning." TamarindArt has an exclusive, worldwide, royalty-free license to reproduce the artwork in any format, including digital formats, but the estate administrators issued a cease-and-desist notice to TamarindArt, claiming that the latter was not the "copyright owner" and thus had no right to reproduce, distribute copies, create derivative works based on it, or publicly display it.

<sup>10</sup>

In another incident, Film Director Quentin Tarantino had been minting and selling NFTs of the screenplay of Pulp Fiction. Soon Enough, the Production company of the Movie MIRAMAX sued him stating that he does not own the rights to the screenplay. Miramax claimed they owned the "broad rights" to offer NFTs based on the script meanwhile Tarantino argued that the original deal he signed gave him the right to "publish" his screenplay and therefore he has a right to

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<sup>9</sup> <https://www.techdirt.com/2011/01/06/second-life-dragged-into-legal-dispute-over-copyright-virtual-horses-virtual-bunnies/>

<sup>10</sup> <https://www.thehindubusinessline.com/opinion/protecting-intellectual-property-in-metaverse/article65408301.ece>

publish NFTs on the blockchain.<sup>11</sup>

A Common question arises in these cases i.e Does the Rights to a physical property entitle them to produce virtual goods based on that Physical property.

In late 2019, Nike obtained a patent called “Cryptokicks” which consists of blockchain mechanism. This effectively ensures that when one buys a pair of physical sneakers, they will also get a cryptographic token representing the ownership of the physical pair of sneakers and such tokens can be stored in a cryptocurrency wallet and transferred to other parties. Several other companies have also moved trademark applications for the marks such as NYSE, DKNY, PUMA, WALMART. In these filings, goods such as “downloadable virtual reality, augmented reality, and mixed reality software”; “downloadable computer software and application programming interface (API) to allow users to access, maintain, store, display, buy, sell, and trade virtual and digital assets, artwork, collectibles, and non-fungible tokens”; “downloadable virtual goods, namely, non-fungible tokens”; “blockchain-based non-fungible tokens (NFTs) and NFT collectible series”; “digital media, namely, digital collectibles, digital tokens, non-fungible tokens (NFTs), cryptocurrencies, and digital art”; “downloadable virtual goods, namely, computer programs featuring clothing, colors, badges and tools for use in online virtual environments”; “downloadable virtual goods, namely, computer programs featuring clothing, colors, badges and tools for use in online virtual environments”; “entertainment services, namely, providing on-line, non-downloadable virtual footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys, accessories, digital animated and non-animated designs and characters, avatars, digital overlays, and skins for use in virtual environments”; etc., are being used for Metaverse related trademark filings globally. The Primary classes for filing these trademark applications are Class 9 – Electric and Scientific Devices and Class 42 – Computer, Scientific and Legal.<sup>12</sup>

Even if the existing NICE classification and IT act is updated to keep up to the metaverse, there is still a question of how IP rights can be enforced as the existing framework and regulations will be incapable of regulating the Metaverse.

Enforcement of IP Rights

The Hurdles to the Enforcement of IP Rights are Twofold. These are the Issues of Identification of Infringing Party and in deciding the jurisdiction of the court in hearing the issue.

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<sup>11</sup> <https://nofilmschool.com/tarantino-nft-hold>

<sup>12</sup> <https://www.lexology.com/library/detail.aspx?g=5dbc81b1-4e40-4365-b232-eb611e907e66>

The Case of Infringement against Hermès were unfazed with these issues as the alleged Infringing party had identified himself. But Soon, As the Metaverse will be based on Blockchain technology even if the virtual identity is discovered their real-world identity would not be discovered. Therefore, there arises the risk of large no. of offenders as people would commit crimes without a care when under a pseudonymity.

In the Current iteration of Internet, the platforms have developed a mechanism where the affected parties could report their claims to the platform in order to remove the infringing material. Amazon and Flipkart are an example for this as they have removed several infringing materials from their platform upon the information received by them. This could also be the model in the Metaverse where platforms would enforce protocols/policies to remove Infringing material. Evidently a need for regulation will arise whether it be a govt regulation or regulation by the platform itself.

Until then, the best practice for companies would be to file trademark applications under the relevant classes to protect their trademarks but the question still remains on whether they can be raised against digital avatars which can only be solved with the Development of Jurisprudence.

