



The Rising Effect Of The Metaverse On Intellectual Property Protection

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Introduction

The metaverse is a word often heard in technology circles and some instances of everyday life. The impact of its technological innovation has crept into the legal sphere. Before proceeding, it is expedient to define some important terms.

What is the metaverse?

The growth of virtual reality technology has precipitated a plethora of possibilities that can exist in a virtual world. Virtual Reality (VR) involves the generation of digital replicas of real-life situations through the production of 3D concepts and has created the framework for online gaming, social interaction, and even work lives. Within a broader context, this virtual spectrum creates a digital universe better known as the metaverse. The metaverse, however, is not just a descriptive term for amalgamated virtual realities, it is a concept that integrates various virtual spaces into one 3D universe where users can live out real-life realities virtually.²

The nature of VR especially in the gaming world explains at a microcosmic level how the metaverse operates. This is aptly illustrated by the video game, Second Life. Second Life facilitates interaction among users, encourages user-content generation, and promotes user freedom through the navigation of user-customized avatars. The gaming platform operates on a model which simulates real-life settings by not determining objectives for users but allowing them to act out real-life activities such as social interactions, watching movies, shopping, gaming, partying, and even content creation³.

The scope of the metaverse however transcends the representation of real-life personalities by avatars in online games. The nature of work is transformed in the metaverse reality. Corollary to the remote working or work-from-home model, the metaverse enables an online work environment where employees and employers can interact in 3D offices using digital representations of themselves.



¹ Authored by Adekola Thompson, Omolara Ajayi and Kehinde Adegoke (Associates at ALP NG & Co)

² Ravenscraft, E. (2022) What is the Metaverse Exactly? <https://www.wired.com/story/what-is-the-metaverse/> accessed 3:00pm, 26 June 2022

³ Lawler, R. (2022) Second Life Joins the Metaverse Discussion with the Return of its Founder – and some Key Patents <https://www.theverge.com/2022/1/13/22881864/metaverse-second-life-decentralized-moderation-patent-virtual-reality> accessed 3:00pm, 26 June 2022



The metaverse also aids the growth of the digital economy by enabling NFT, virtual real estate, and cryptocurrency transactions. The digital economy runs off the crypto blockchain technology which is fully accessible to any user with an internet connection given its decentralized nature⁴. In this digital eco-system, people can create virtual identities and trade in cryptocurrencies, creating, buying, and selling digital assets and collectibles (NFTs). Although, the metaverse phenomenon is nascent, big tech companies are daily innovating to create the infrastructure to support this digital world. Meta for instance is focused on revolutionizing its social media platforms into VR platforms while companies like Roblox, Nvidia, and Epic are developing their gaming platforms for better virtual experiences. Through the steady advancement of VR technology, the metaverse pushes towards the comprehensive digitalization of our lives.

What is IP/IP in cyberspace?



Intellectual property rights (IPR) promote innovation and creativity, which in turn generates jobs and improves competitiveness. Intellectual property rights enable authors, artists, designers, inventors, and other IPR users to benefit when others use their creations and inventions⁵. In order to prevent wrongful use of their creations or inventions, inventors, designers, authors, and developers can protect ideas developed by them by means of copyright or patents. It also gives them an opportunity to earn returns on the money they invested in developing a product⁶.

IP infringements are breaches of intellectual property rights. Examples of such are counterfeiting, piracy, etc. The AU⁷ through article 3 of the Statue of the Pan-African Intellectual Property Organisation (PAIPO) has mandated to ‘promote the effective use of the intellectual property system as a tool for economic, cultural, social and technological development for the continent as well as set intellectual property standards that reflect the needs of the African Union, its member states and Regional Economic Communities (RECs)’. In Addition to PAIPO, there are other Pan-African organizations which safeguard Intellectual Property protection among its members, such as ARIPO⁸ which is for English-speaking African countries, and of which Nigeria is not a member, and OAPI⁹ for francophone speaking Africa.

⁴Analyticsinsight (2022) The Metaverse and the New Digital Economy

<https://www.analyticsinsight.net/the-metaverse-and-the-new-digital-economy/#:~:text=The%20metaverse%20is%20essentially%20a,a%20crypto%2Dbased%20economic%20system> accessed 3:00pm, 26 June 2022

⁵ https://www.eesc.europa.eu/sites/default/files/files/factsheet_-_the_protection_of_intellectual_property_0.pdf (accessed on 24 June 2022)

⁶ <https://www.government.nl/topics/intellectual-property/protection-of-intellectual-property#:~:text=Inventors%2C%20designers%2C%20developers%20and%20authors,from%20their%20creations%20or%20inventions> (accessed 24 June 2022)

⁷ African Union

⁸ African Regional Intellectual Property Organisation

⁹ Organisation Africaine de la Propriete Intellectuelle



The legal infrastructure to adopt and maintain Intellectual Property protection on the African continent still remains fragmented at the regional level, notwithstanding the afore-mentioned legal infrastructure at the Pan-African level¹⁰. In spite of the revelation above, the Intellectual Property space is progressively becoming cohesive, due to the catalyst technology provides through the Metaverse and the potential value it is set to provide.

Traditionally, Intellectual Property can be protected in the following ways:

1. **Patents:** which grant property rights on an invention, allowing holder to exclude others from making, selling, or using the invention.
2. **Trademarks:** a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors.
3. **Trade Secrets:** a formula, process, device, or other business information that companies keep private to give them a business advantage over their competitors. Examples include soda formulas, customer lists, survey results, computer algorithms, etc.
4. **Copyrights:** protects original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work¹¹.

On the foundation of the traditional methods of IP protection, the demands of trade and engagement of digital assets in cyber space have catalyzed legal regimes globally as elucidated below.

IP in Cyberspace

The rights associated with IP are enforceable by law given the protection they enjoy under legislative enactments, the violation of which earns the creator the right of redress. IP enjoys a notable presence in cyberspace due to the increase in digitization and creation of online content. However, as much as there are economic and reputational benefits of online publications, the multi-jurisdictional nature of cyberspace also raises the risk of infringements.

Cyberspace is a digital domain that facilitates online communication through electronic mediums. The connection of computers through a network creates a communication channel over cyberspace, making it possible for users to create, publish, and exchange information¹². However, the high level of accessibility to online content also makes it easy for users to modify, edit and share content with ease giving rise to the possibility of infringement. It has therefore been necessary to establish anti-IP infringement frameworks through robust protection laws and policies to curb the prevalence of online infringement activities such as linking, software piracy, cybersquatting, etc¹³.

Nonetheless, complications abound in regulation given the difference in approach across climes. While the EU through its Copyright Directive imposes strict measures by obligating online content sharing service providers like Facebook and Twitter to take down unauthorized protected works¹⁴, the US copyright laws absolve these platforms of responsibility for the infringement acts of users or other service providers¹⁵. Equally, the challenges posed by private international law dynamics and jurisdiction-related issues are still rife in adjudicating online infringement cases¹⁶.

¹⁰AfCFTA Phase II: Towards active participation of ECOWAS in the Intellectual Property Rights Negotiations.

¹¹<https://www.afronomiclaw.org/2019/10/30/afcfata-phase-ii-towards-active-participation-of-ecowas-in-the-intellectual-property-rights-negotiations> accessed 2:25pm 7 July 2022

¹²<https://www.upcounsel.com/intellectual-property-protection> (accessed on 24 June 2022)

¹³Techopedia (2022) Cyberspace <https://www.techopedia.com/definition/2493/cyberspace>

¹⁴GeeksforGeeks (2021) Intellectual Property in Cyberspace <https://www.techopedia.com/definition/2493/cyberspace> accessed 3:00pm, 26 June 2022

¹⁵Article 13, EU Directive on Copyright in the Digital Single Market 2019

¹⁶Section 230, Communications Decency Act 1996

¹⁷Georgiades, Y. (2019) IP Issues on the Internet <https://www.lawyer-monthly.com/2019/04/ip-issues-on-the-internet/> accessed 3:00pm, 26 June 2022



New technology today extends the frontiers of IP protection and regulation. Blockchain technology makes it easier to manage IP rights given the immutable nature of information on the blockchain. It fosters efficiency in registering works created on Blockchain technology, cutting down on the lengthy procedure involved in conventional registration processes¹⁷.

Intellectual Property and the Blockchain

The blockchain is a decentralized network of information that is stored on an immutable ledger that every member(node) of the network has an exact replica of. The ledger serves as a permanent record containing all successful transactions executed on the network. This information is stored in blocks of compressed data that are linked together in a permanent and incorruptible sequence that makes it very difficult or statistically improbable to steal or commit fraud without a trace.



The features of this technology make it very appealing for the transparency it provides among the many use cases it has been applied to. The financial industry is an overt area of consideration for blockchain technology application because individuals covet transparency and accountability from any entity responsible for managing or storing their money or means of monetary exchange.

It is precisely for the reasons mentioned above that have caused blockchain to single-handedly create the new infrastructure of the internet, known as web 3.0. A fundamental feature of this new form of the internet is decentralized. This implies that the currently changing state of web.2.0 we know is a centralized form of the internet, where large corporations and technological companies such as Google/Alphabet (Parent company of YouTube, Waze, Fitbit, Looker, Nest, DoubleClick) collectively control 92% of the global search engine market¹⁸. Meta (formerly Facebook) has several companies under its corporate banner, some of which include WhatsApp, Instagram, Oculus VR, Onavo and Beluga¹⁹. The statistic is a staggering representation of how much control a select number of companies have over the internet. Much of the corporate decisions taken to this effect have empowered and enriched the parent companies, among others yet to be mentioned in what many core web3.0 advocates believe to be dangerous, unfair and unjust.

¹⁷ Rose, A. (2020) Blockchain: Transforming the Registration of IP Rights and Strengthening the Protection of Unregistered IP Rights. WIPO Magazine. [https://www.wipo.int/wipo_magazine_digital/en/2020/article_0002.html#:~:text=Blockchain%20technology%20can%20also%20potentially,iP%20applicable\)%20and%20jurisdictional%20requirements](https://www.wipo.int/wipo_magazine_digital/en/2020/article_0002.html#:~:text=Blockchain%20technology%20can%20also%20potentially,iP%20applicable)%20and%20jurisdictional%20requirements) accessed 3:00pm, 26 June 2022

¹⁸ <https://www.investopedia.com/investing/companies-owned-by-google/> accessed 7:40pm, 24 June 2022

¹⁹ <https://www.investopedia.com/investing/companies-owned-by-google/> accessed 8:04pm 24 June 2022



The collective sentiment behind staunch advocacy for the adoption of blockchain technology has been met with mixed opinions and sometimes harsh responses from governments around the world ²⁰. Notwithstanding the backlash, the technology, though in its infantile stages, maintains features that are set to sustain it in the long run much unlike anything that has been seen before. The influence of the technology can be seen across many fields today, most notably, the areas of finance and the fast-developing space of intellectual property.

Given the previously outlined characteristics of blockchain technology, a fast-rising new asset class is on the rise and gaining legal recognition even in some countries, and they are known as Non-Fungible Tokens or NFT's for short. A characteristic of this nouveaux entity is that because of the blockchain, there is a unique time stamp and identity that is ascribed to any digital file, regardless of its format as a video, picture, message etc. that is stored and easily identified by anyone on the blockchain platform. For NFT creations, IP questions surface with regards to the IP rights of minters and buyers of the digital asset. In light of these emerging digital practices and their attendant legal controversies, IP protection policymakers, regulators, and stakeholders need to work towards the establishment of internationally agreed standards in defining IP rights in emerging areas of digitalization.

Challenges

The development of the technology has birthed a new legal entity that is likely to prove challenging to the legal profession, and they are known as DAO's or Decentralized Autonomous Organizations. They essentially function as a traditional cooperative group ²¹, but rather than operate by a set of rules or charter as outlined by its members, the DAO executes transactions and manages the pooled resources of the organization through smart contracts. Considering that the cooperative often gathers persons who intend to pool resources to transact business for a profit, the DAO can be classified as a company. The key challenge here refers to the liability of the members of the DAO's because the liability of each member is unlimited. By virtue of the fact that there is no government institution indemnifying any asset traded or simply acquired by the group, then the members of the DAO bear the full liability of any detrimental business outcome without mitigation. Some DAOs exist to purchase real-estate in the Metaverse ²², and in the event there is an issue with a bad investment, all members of the DAO suffer liability. The challenge lies in the difficulty to ascribe liability for the recovery of funds in the event of a bad business decision.

Another major challenge is that digital assets are not necessarily recognized by law in some countries, making it difficult to legislate effectively around a potentially new asset class.



²⁰https://us02web.zoom.us/webinar/register/WN_vyjqcfAPSMGuismiAuvm8w> accessed 8:30pm 24 June 2022

²¹<https://www.ica.coop/en/cooperatives/what-is-a-cooperative#:~:text=Cooperatives%20are%20people%2Dcentred%20enterprises,a%20democratic%20and%20equal%20way.> accessed 5:45pm 27 June 27 2022

²²<https://accelerationeconomy.com/metaverse/how-daos-impact-the-metaverse/> accessed 6:20pm 27 June 2022



Conclusion

Some countries are taking the necessary steps to facilitate the development of the technology, such as Singapore, whose High court served a Mareva injunction on a class of digital asset called cryptocurrencies²³. The case that persuaded the Court to issue a world-wide Mareva injunction on the movement of the assets, with the identities of the persons involved unknown, provoked two questions that were both answered in the affirmative. They were:

1. Whether stolen cryptocurrency assets could be the subject of a proprietary injunction, and
2. Whether the court had jurisdiction to grant interim orders against persons whose identities were, at the time of the commencement of the suit, unknown.

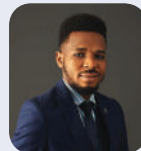
The effect of this decision taken by the court is testament to the importance of international collaboration of countries and judiciaries. The synergy of legal frameworks across multiple jurisdictions is less a probability and more of an inevitability. With these few simple steps, Intellectual Property can begin to hold greater sway in the cyber domain and develop the necessary innovative legal regime for countries around the world.

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²³<https://www.lexology.com/library/detail.aspx?g=abd22b8a-63c7-469c-a836-648b21385433> accessed 6:21pm 27 June 2022