LAW AND ETHICS IN METAVERSE

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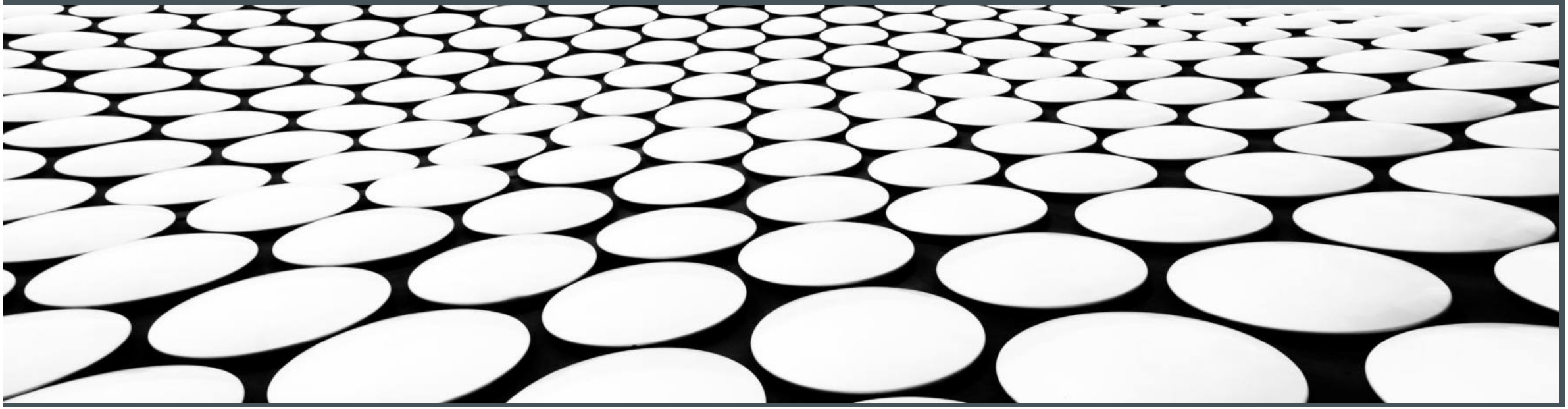


OUTLINE

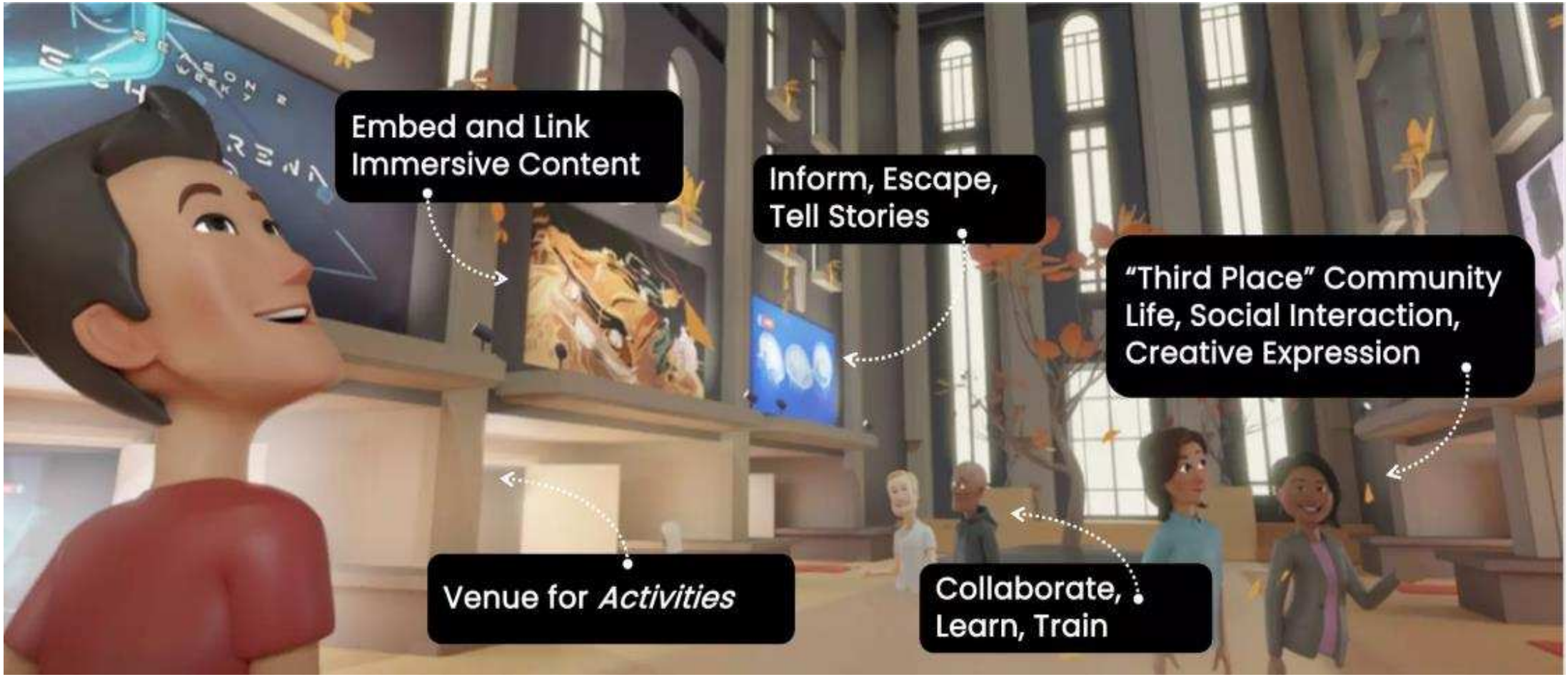
- What is Metaverse
- Laws on Metaverse
- Ethics on Metaverse

Example of a virtual world: https://youtu.be/KW64FiB0lTg

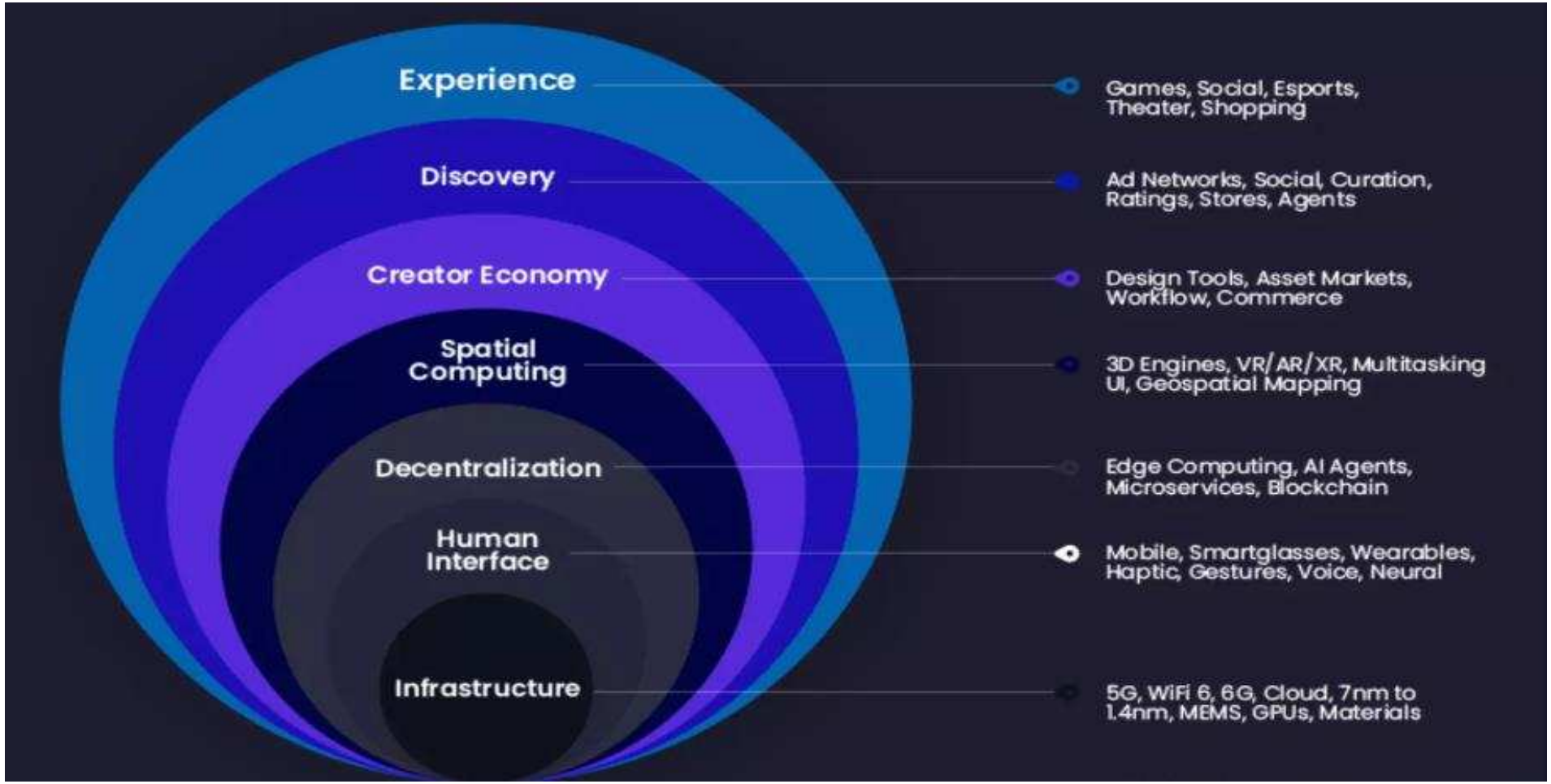
WHAT IS METAVERSE?

- The term “metaverse” was first used in Neil Stevenson's 1982 novel, Snow Crash. Stevenson’s metaverse was a virtual place where characters could go to escape a dreary totalitarian reality.
- Metaverse is a virtual reality space in which users can interact with a computer generated environment and other users.
- Combination of augmented, virtual and mixed reality can be metaverse.
- It is a network of 3D virtual worlds focused on social connection. In futurism and science fiction, it is described as hypothetical iteration of the Internet.
- The internet will eventually evolve into the metaverse, which will come to represent the next major computing platform.

WHAT DOES THE METAVERSE DO?



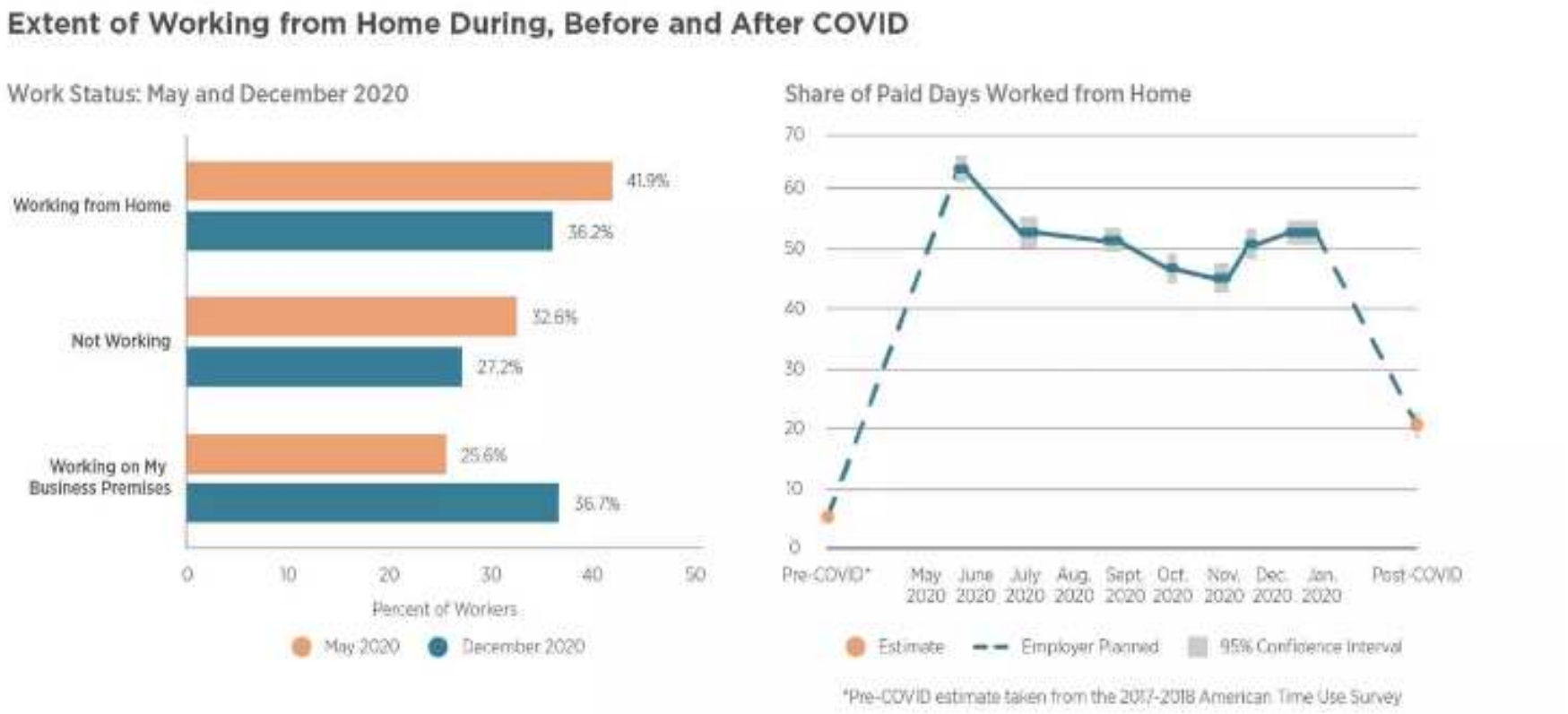
THE SEVEN LAYERS OF THE METAVERSE



Experiences:

- Gaming
- Immerse commerce
- Real estate
- Travel
- Education

COVID 19 ACCELERATED THE VIRTUAL



LEGALITY OF METAVERSE: The Legal And Regulatory Concerns Are Six-fold:

- Security & Privacy Concerns
- Application of Anti-Trust & Competition Laws
- IPR Infringements
- Enforcement of Liability
- Contracts Law
- Jurisdictional Concerns

Security & Privacy Concerns

Given the predicted number of Metaverse users, the platform is expected to amass vast volumes of sensitive personal data. In the privacy policy of any AR-VR device, it is generally claimed that it would gather data about an individual's biological information, physical surroundings and other personal information. Since such biometric data is being collected, this would fall under the definition of "sensitive personal data" under the IT Rules.

Section 69 of the IT Act empowers the government to issue orders authorizing the interception/decryption of information to "ensure the security, sovereignty, or integrity of the state". The government can monitor data in the Metaverse environment, and if it is seen to be against public policy, it can be withheld, and the company can be penalized for failing to comply with the rules. In the metaverse era, it is expected that the law would inject itself in a way that balances fundamental rights, such as freedom of expression, with the preservation of the public interest, though it remains to be seen how successful this is in practical terms.

Application of Anti-Trust & Competition Laws

The Competition Act 2002 enforces antitrust laws by “making any contract, combination, or conspiracy to hinder commerce, as well as monopolization, attempted monopolization, or conspiracy or combination to monopolize, illegal”. It also prohibits undue restraints. While the bulk of anti-competitive practices that occur in the actual world can also exist in some form in the metaverse, the metaverse’s fundamental nature and the blockchain make such activities impossible to detect and punish, letting corporations engage in such practices with impunity.

Anti-competitive firms can use private blockchains to share commercially sensitive information among themselves, such as price-related details. These blockchains can only be accessed by those who have the authorization of the blockchain’s owner. Authorities will be unable to access these communications and, as a result, prosecute such behavior – however by way of demand under the relevant statutes, authorities may ask for such information. This is different from the current scenario, in which authorities can easily examine businesses’ facilities to gather evidence concerning such infringements.

Intellectual Property Rights Infringement

Since Metaverse's inception, the market for virtual accessories has witnessed an expansion; people are more inclined to spend real money on virtual fashion items for their avatars as their attachment to them deepens. Metaverse has experienced a flood of trademark infringement accusations due to the ease with which virtual products can be replicated. Businesses are now concerned about the extension of their physical product trademarks to their online counterparts.

While there is currently a lacuna in any government legislation that can provide redressals to virtual IPR-infringements, a possible solution for companies is blockchain technology. A blockchain is a permanent and immutable record of data, which means that once data is entered into it, it cannot be erased or changed until a consensus method is used.

This technology can be used when a company's virtual goods or services reside outside of a single Metaverse platform. This technology incorporates and protects intellectual property rights in content associated with goods and services. Descriptions of the relevant commodities, their ownership history, and the scope of the relevant rights are attached. This information can establish the product's permissible and forbidden applications. Furthermore, this data is linked to the product throughout its digital life, even as it moves from platform to platform. This is a purportedly effective means of protecting a brand's intellectual property.

Alice Corp. v. CLS Bank International (2014), the Supreme Court of the United States

It held that offshore application software was not eligible for a patent because it was merely implementing an "abstract idea." This ruling adds to the challenges of obtaining patents for metaverse technologies. If accused of infringing on a metaverse patent, the defendant will likely argue that the patented invention is based on an "abstract notion," which typically cannot be patented.

To receive protection under patent laws, a technology must fulfil certain criteria, including novelty, inventive step, and industrial application. Therefore, determining whether a specific metaverse patent has been infringed upon by other technologies will likely remain a contentious issue, particularly due to the rapid evolution of the technology. It will be challenging to distinguish between a truly "novel" invention and a mere modification of an existing one.

TRADEMARK LAW IN METAVERSE

The Metaverse (or “Web 3.0”) provides varying levels of access to three-dimensional environments for various decentralized activities such as gaming, commerce, social media, dissemination of authenticated digital assets such as non-fungible tokens (NFTs) and cryptocurrency, and others. Participants can engage in any number of virtual reality activities and transactions with others at any conceivable virtual location, whether based in reality or in fantasy. Not surprisingly, trademark law has now reached the Metaverse.

Often, the asset represented by the NFT is artwork. In the “real-world,” you can own a physical piece of artwork with or without also owning the right to copy (i.e., copyright) the artwork. Analogous to copyright, the NFT is indicative of ownership of a representation of a particular work of art that has been “tokenized,” but not of ownership of the actual artwork itself unless specifically granted by the seller. Thus, proving valid ownership of artwork that could otherwise be untraceably copied is established by the NFT time-stamping and tamper-evident functions. Ownership transfers are likewise easily traceable and verifiable, reducing the risk of fraud.

Digital Collectibles and Ors. v. Galactacus Funware and Anr., 2023 SCC Online Del 2306

The Court had the opportunity to analyse the effects of non-fungibe tokens of NFT based digital player cards in relation to intellectual property rights in India. While the judgment appears to be limited in the scope to assessing the right of publicity in India, it has far reaching implications for the regulation of NFTs, beyond just skill based online gaming sector and fantasy sports.

Hermès v. Rothschild Case No.1:22-cv-00384 (S.D.N.Y. Feb. 2, 2023)

- In the first U.S. lawsuit to consider application of trademark rights associated with physical products to digital assets, Hermès International/Hermès of Paris, Inc. sued artist Mason Rothschild for trademark infringement, dilution, and cybersquatting in connection with a series of "MetaBirkins" NFTs linked to digital faux-fur versions of the well-known Hermès Birkin handbag and associated BIRKIN trademark registration. The NFTs were sold to individual buyers for up to thousands of dollars each.
- At trial, the jury found Rothschild liable for trademark infringement, dilution, and cybersquatting and awarded damages to Hermès in the amount of $133,000, $110,000 for trademark infringement, and $23,000 for cybersquatting by applying *Rogers* test i.e.,:
- (1) Does the work have some artistic relevance to the underlying work?
- (2) Is the work explicitly misleading as to the source of the content of the work?

Nike v. StockX LLC, 1:22-cv-00983 (S.D.N.Y. Feb. 3, 2022)

In February of 2022, Nike sued StockX for trademark infringement relating to the resale of Nike sneakers. StockX is a streetwear reseller that also provides authentication services to customers including a collection of NFTs linked to allegedly authenticated physical goods. Many of the StockX minted NFTs include images of Nike sneakers, which Nike alleges are virtual products constituting trademark infringement, false designation of origin, and trademark dilution among other causes of action. StockX responded that the NFTs are merely a method to track ownership and authenticity of physical Nike products sold on the StockX marketplace and not virtual "products" in themselves, noting that the NFTs may be redeemed by the owner at any time in exchange for delivery of the actual physical shoes.

The outcome remains to be determined, and barring a settlement may hinge on whether the court accepts Nike's position that the StockX NFTs are virtual products or alternatively StockX's position that the NFTs are merely digital "receipts" for physical products.

Yuga Labs, Inc. v. Ripps 22-cv-04355 (C.D. Cal. June 24, 2022).

This case involves issues of trademark rights associated with NFTs and digital images. Yuga Labs is the creator of the Bored Apes Yacht Club (BAYC) collection of NFTs. The Bored Ape NFT collection depicts comical images of anthropomorphic "bored" apes which have become status symbols, with many owned by well-known celebrities. The Bored Ape NFTs can sell for millions of dollars. Estimated sales of Bored Ape Yacht Club NFTs exceed one billion dollars. In July of 2022, Yuga Labs filed a lawsuit against Los Angeles-based artist Ryder Ripps and others, claiming false designation of origin, false advertising, cybersquatting, trademark infringement, trademark dilution, unfair competition, and others.

The court in Yuga followed the court's lead in *Hermès* in holding that NFTs are not merely digital images. Yuga had not transferred or abandoned its trademark rights in the BAYC marks by selling the BAYC NFTs despite the transfer of copyright as part of the sale. Thus, the NFT transfer of rights was not held to be an unrestricted license.

Liability of Enforcement

Blockchain technology considerably improves security because no single user may change the data on a blockchain without the agreement of other users. Another important aspect of blockchain technology is pseudonymity, which means that even if a user's virtual identity is known, their real-world identity cannot be discovered.

However, despite the potential advantages of blockchain technology, this poses very specific and distinct concerns. For example, if one virtual avatar harasses another virtual avatar. Will the harasser face consequences for their actions? Law enforcement would be problematic since authorities would be powerless to hold anyone accountable for their crimes in the metaverse due to a lack of understanding and application of law in such domains.

CONTRACT LAW

Contract laws in the real world govern the enactment of legal contracts made between two parties. In the metaverse, contract laws can apply to a range of activities, such as renting and selling virtual goods and services.

Jurisdictional Concerns

Given that Metaverse is expected to be used by people from many origins, nations, and locations, the question emerges as to which nation's laws will regulate the digital realm and Metaverse environment. Jurisdiction will be even more uncertain in a borderless virtual space and this is a point of significant concern to several government bodies.

The position on this topic is still quite ambiguous, and there is no clear response from the authorities. The only feasible solution is to combine and develop legislation together. The rules must evolve in response to changing dynamics, incorporating numerous provisions to cope with new challenges and providing the world with solutions.

CASE LAWS RELATED TO JURISDICTION CONFLICT IN METAVERSE:

In Ang v Reliantco Investments Ltd [2019] EWHC 879 (Comm) a user of a cryptocurrency platform relied on the Brussels Regulation to ask the English court to disregard the platform's standard terms, which gave Cypriot courts exclusive jurisdiction. The court in that case concluded the user was a consumer under the Brussels Regulation and entitled to bring her claim in England.

In ***Soleymani v Nifty Gateway LLC*** [2022] EWHC 773 (Comm) an art collector sought to challenge a New York arbitration clause on the basis of the Civil Jurisdiction and Judgments Act 1982 which states that consumers are entitled to resolve disputes in their domestic courts.

ARE THE INDIAN LAWS READY FOR METAVERSE?

With the arrival of Magicverse (Metaverse) imminent, it is important for Governments to translate laws and regulations to make this age more competitive, innovative and equitable to the conventional physical age. Some important concepts may need a re-alignment and rethink for the digital age. With a redefinition of “ownership” in Web 3.0, it is imperative to analyze whether digital goods should continue to be treated as “services” under the GST law. Currently, no customs duty is leviable on import of intangibles into India unless recorded on a media. GST is leviable on most digital supplies as supply of services, where either GST is payable by the supplier of services/recipient of services, as the case may be. The essential reason linked to intangibles being perceived as “supply of services” is that currently most digital transfers operate on a license model. Most digital creations currently include a temporary licensing with currently blockchain not allowing owning of digital goods. Hence, current stipulations of no levying customs duty on such movement of intangibles and most of these triggering a standard rate of GST at 18% (as supply of services), fit well with the Government’s laid objective on taxing such supplies.

EXAMPLES:

Gucci has teamed up with product and entertainment company Superplastic to create a limited series of collectible NFTs.

Ralph Lauren is selling clothing for avatars

Nike is creating an NFT that links to its real-world counterpart.

Facebook, now known as Meta, has already opened up its metaverse world, Horizon Worlds, and Microsoft plans to open up a metaverse version of its Teams app soon.

Dolce & Gabbana, has launched an exclusive range of branded NFT-based digital wearables that also provide followers of the brand access to the physical version of the wearable.

TRADEMARK FILINGS OF MAJOR BRANDS FOR VIRTUAL GOODS AND SERVICES

McDonald’s filed 10 applications with the US Patent and Trademark Office for the McDonald's brand and McCafe. The trademarks show they are for "operating a virtual restaurant online featuring home delivery".

Converse has also filed multiple applications to obtain trademark protection for virtual goods and services for its famous marks, such as the well-known ALL STAR CHUCK TAYLOR logo (Application # 97107382); and

Abercrombie & Fitch has filed trademark applications for its bird and moose silhouette designs (Application #’s 97106352 and 97106342) covering virtual goods;

Nike recently made headlines by filing trademark applications with the United States Patent and Trademark Office for such goods and services for many of its iconic brands like NIKE (Application # 97095855), JUST DO IT (Application # 97096236), and its AIR JORDAN logo (Application # 97096945).

EUROPEAN UNION AND METAVERSE

A key aspect of the metaverse is the virtual economy that is created within the virtual world which are, in some cases, run on crypto-assets. Crypto-assets are set to be regulated by a new ***Markets in Crypto-Assets (MiCA)*** Regulation, which will create an EU-wide framework to regulate certain types of crypto-assets.

The European Parliament has emphasised that the privacy and data protection framework does apply to the metaverse and has called on the Commission to ensure the compliance of companies and entities working in the metaverse with the existing legal framework.

The EU has opted for a human-centric approach to AI in the draft AI act, which could limit unwelcome developments. Moreover, the EU has established a framework for data sharing management and consent controls for people via data intermediation services, such as personal data spaces (or data wallets), in the draft data governance act.

CONT.....

European Union is about to launch Global Metaverse Regulation in 2023. It is anticipated that the EU's metaverse regulation will cover 3 topics in particular:

A) Network Infrastructure Taxes

B) Rebooted Digital Rules

C) Safety and Interoperability Measures

USA AND METAVERSE

Facebook renamed its parent corporation “Meta” and committed US$180 billion dollars to develop the metaverse. Mark Zuckerberg said it is a “reasonable construct” for the metaverse to be a time, not a place.

Existing U.S. federal laws likely to play a role include intellectual property, tax, securities/banking, gambling/lottery, currency, antitrust, unfair trade practices, cybersecurity, employment, disabilities act and statutes for the protection of children. One of the problems with these existing laws is that they are inadequate for novel issues raised by the metaverse, such as the scope of the right to use content held by an NFT owner.

European Union is about to launch Global Metaverse Regulation in 2023, What we need to see is that will the US follow that regulation.

CONT....

There has been unilateral regulation of the metaverse as of now. In the meantime, regulators have delivered mixed and fragmentary messages:

A) Meta’s acquisition of popular metaverse application

B) Data Privacy Laws

C) Antitrust Reform

WHAT ARE THE ETHICAL CONCERNS IN THE METAVERSE?

- privacy, social and economic inequalities, accessibility, identity control, freedom of creative expression, etc
- For example, biometric or brainwave data might be maliciously accessed, which could be used unscrupulously to control thoughts and behavior; or the ability to have multiple identities for different digital spaces. I'll explore some of these ideas in future articles, but for now, it's enough to say that it's never too soon to start discussing ethical concerns.
- Deepfakes, hacked avatars, and manipulated objects are some of the types of malicious behavior companies will have to stay on top of.

- For example, MIT and Mozilla released a deepfake video that shows President Nixon announcing that Apollo 11 had not succeeded in its mission to the moon. This video of an alternate reality of sorts has gotten a lot of coverage and helped further the conversation about deepfakes and ethics.
- https://youtu.be/7nD3zrMN47E

TOWARDS VALUES AND ETHICAL PRINCIPLES OF THE META VERSE

- Respect, protection and promotion of human rights and fundamental freedoms and human dignity.
- Environment and ecosystem flourishing
- Ensuring diversity and inclusiveness
- Living in peaceful, just and interconnected societies [UNESCO's recommendation on the ethics of artificial intelligence]

Ethical principles for a just metaverse will probably include notions such as: fairness, equality, responsibility and accountability, privacy, security, safety, green and sustainability, children and other vulnerable groups, do-not-harm business models, transparency, inclusiveness, and liberty.

BLACK BOXES AND OPACITY IN AI

- black-box nature of intelligent systems makes interaction limited and uninformative for the end user. The lack of sufficient information regarding the emerging behaviour of a system results in its users creating inaccurate mental models
- Organisations have been exploiting the black-box nature of systems to deny the legal liability of their systems.
- examples of such practices, e.g. Apple's discriminatory credit card system (Nasiripour & Natarajan, 2019), Lufthansa's anti-monopoly (Bundeskartellamt, 2018), and others.

ETHICAL CONCERNS IN THE METAVERSE

- Privacy
- Social and economic inequalities
- Accessibility
- Identity control
- Freedom of creative expression
- Ability to have multiple identities for different digital spaces

A Code of Ethics for the Metaverse

1. Show Respect

Treat others with respect and dignity.

2. Tell the Truth

Do not endorse lies, mislead, or willfully deceive others.

3. Do no Harm

Anticipate how your actions might impact others. Mitigate harm and work for good.

4. Show Concern

Concern and care for others is rooted in relationships and listening. Are you showing empathy for others?

5. Work for Good

Do not enable bad behavior. If you witness abuse or harassment, speak up!

6. Demonstrate Tolerance

Acknowledge and respect differences.

7. Respect Privacy

Do not collect information from other metaverse citizens and share it without their consent.


THANK
YOU..!!