

The legal wild west of the metaverse - Its legal implications

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Abstract

The world is now experiencing a blockchain-based Data Monetization revolution. With the creation of a new kind of virtual asset through blockchain technology that procures the value of trust at the lowest cost and a platform called metaverse that can best utilize it, the world is now experiencing a perfect storm.

What is the metaverse?

With reference to the 3D virtual world, it is a combination of the word “meta”, meaning 3D virtual world, fiction, abstract and the word “universe”, meaning the real world. Technically, it may be seen as a form of the virtual world, such as the web and the Internet, fused with the real world and also may be defined as an advanced Internet consisting of permanent 3D virtual spaces connected to the perceived virtual world.

In summary, it may be defined as a space of computer-based simulation environment in which users create avatars, live, and interact, and can engage in various cultural, artistic, social, and economic activities such as games, communication, and commerce.

There are four characteristics: i) Augmented Reality, ii) Life Logging, iii) Mirror Worlds, iv) Virtual Worlds.

The most representative successful models include Zepeto, Roblox, Gather, and Decentraland. Activities within the metaverse include i) engaging in revenue-generating activities by the users through the sale of self-made avatar items or games to other users; ii) generating real-world revenue by using it as a channel for advertisement, promotion, marketing, and training; and iii) trading digital assets using irreplaceable tokens.

Metaverse legal issues – Intellectual Property

Typically, in the metaverse, issues in relation to intellectual property law may arise in circumstances where users engage in socio-economic activities through 3D avatars that are created through the users' own facial recognition in which real-world brand designs may be used in items worn by those avatars and where internal structure of the interactive buildings in the real world may be imitated.

First of all, there may be issues with publicity rights in the method of creating the avatar. Article 2, No. 1 of the Unfair Competition Prevention Act prohibits unauthorized usage of celebrity names, portraits, voices, and signatures in a way that is contrary to fair commercial practices or competitive order. Therefore, it may be considered infringement of publicity rights when there is unauthorized usage of photographs of public figures and celebrities, usage of names of

celebrities in the names of the avatars, and/or creation and sale of such related items.

In addition, since users may create, post, sell, and provide their own items to other users, copyright issues may also arise. Such circumstances may arise where real-world work is produced and sold as an item without the permission of the copyright holder; real-world work is reproduced, performed, exhibited, distributed, or rented on the metaverse platform without the permission of the copyright holder; and items created by other users within the metaverse platform are used without permission to create other modified items. In these circumstances, where substantial similarity to the dependency is recognized, if one copies another's work for the purpose of sale without at least checking whether it is in the public domain, one will not only be demanded to comply for request for suspension but also be obligated to compensate for damages.

However, for circumstances where real-world buildings are implemented on metaverse platforms so that users may visit at any time and where such buildings consist of buildings like the Gwanghwamun Gate and Sungnyemun Gate, which are always open to the public, such replications and implementations on the metaverse are considered exceptions and permitted for reproducing works of art. (However, reproduction for sale purposes is not permitted.) If other behavioral aspects are reproduced, performed, exhibited, distributed, or rented, issues of copyright infringement may arise. Therefore, it is essential to review the content of the operator before uploading, and it seems necessary to obtain consent by stating that the operator may delete the content if issues of copyright may be identified after the content has been published. In addition, it means that an item is an artwork that can be reproduced in the same shape of the item, and that it can be distinguished from the used item and recognized for its identity. Besides, there are problems such as whether it can be recognized as a secondary work, but there is still a problem that infringes on the copyright of the original author.

There are also issues with trademarks. Using real-world brands, companies produce and sell items for avatars on metaverse platforms (GUCCI, MLB, NIKE, CU convenience store) and provide services linked to real-world convenience stores. In this regard, such circumstances may arise when such related items are used within the platform; when businesses are creating and selling items using their trademarks on the platform then a user creates and sells the same item; and when items that have become famous on the metaverse platform are imitated and produced in the real world.

Acts of infringement on trademarks of exclusive use rights may refer to "usage of the same trademark for products similar to the designated products at the time of the trademark registration" or "usage of the trademarks similar to real-world registered trademarks for products identical to or similar to the designated products." There is also room to view the act as applicable to even one of the designated products according to the international product classification such as "downloadable image files" or even to "virtual reality software, data processing software for graphical representation." If a trademark is registered in such a designated product, infringement may occur.

Regarding design rights, infringement issues may arise in circumstances where a real-world registered design or a similar design is sold as an item in the metaverse platform without a legitimate authority; and where the owner of the design right or the licensee already sells the item of the real-world registered design on the metaverse platform or produces a metaverse platform design item in the real-world. In such cases, the goods or articles is likely to be identical or similar, thus likely to raise infringement issues.

In relation to the Unfair Competition Prevention Act, there is also a possibility that publicity rights may be an issue, and there is a possibility of infringement because the same marketability (under the Industrial Design Protection Act, 'image' has been added as goods, so it may be considered to be protected based on this) can be recognized for unauthorized use of trademark designs.

In this regard, the metaverse operator should warn of the possibility of the infringement of the intellectual property rights by stating the contents of the prohibited acts in the terms of use and specify that the contents can be reviewed,

supervised, and deleted; but should also state that this is not mandatory, and that the operator cannot be held accountable.

Metaverse-related legal issues – Game Industry Promotion Act/Electronic Transaction Act issues

It is necessary to check whether it is obligated as a mobile platform operator for commercial activities on the metaverse. Commercial transactions on the metaverse are considered online commerce, and if virtual reality or augmented reality on the metaverse allows for various services and selling of products to customers, then there is room for one to be considered an online platform operator. An online platform refers to an electronic system on the Internet for the purpose of exchange of trade information between two or more users, and the person who provides the service using the system is called an online platform operator. Meanwhile, there are no clear regulations on the relationship between online platform operators and the suppliers, and thus discussions have begun on this subject for regulation. There is a discussion on whether the platform operator acts as a simple broker or even acts as an agent under the commercial law, and there is an opinion that online platform operators should be subject to the same responsibilities as e-commerce operators.

There has been active discussion lately whether the metaverse may be considered a game under the Game Industry Promotion Act. If it is considered and regulated as a game industry, then there is an issue as to whether the Game Industry Promotion Act should be applied in deliberating the ratings of the virtual reality. In addition, according to the current trend of P2E, people have been rewarded for being active on the metaverse, which has been deemed as a game according to the Game Rating Board. Subsequently, domestic IPs have been blocked creating a problem.

Metaverse legal issues – Privacy issues

The collection and use of personal information on the metaverse may also be a problem. In the case of web or mobile-based platforms, as in the case of existing online platform operators, they are obligated to collect the minimum information for a purpose, and if they transfer the information to an internal provider or a third party, they must obtain separate consent. In particular, since the metaverse creates circumstances where it is possible that simultaneous access from all over the world is possible, it is necessary to assume that supplies may be received from overseas business owners. In this case, the transfer of personal information to foreign countries requires separate consent, and the country, date, and time of transfer, and method of transfer must be notified. In addition, when collecting biometric information using HMD or suits, separate consent and measures necessary to secure stability must also be taken. According to the Act on the Protection and Use of Location Information, the application of the above laws may be excluded if location information presupposes a physical place in the real world.

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