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Paris Arbitration Week Recap: Metaverse-Related Sessions

Elizabeth Chan, Ekaterina Oger Grivnova, Ipek Ince (Allen & Overy), Emily Hay (Hanotiau & van den Berg), Juliette Asso-Richard (Lalive), and Yasmin Mohammad (Fortress Investment Group) / April 24, 2022 / [Leave a comment](#)

As part of the 2022 Paris Arbitration Week, several sessions were held in (relation to) the metaverse. This post provides an overview of the discussions held by the third panel during the [6th ICC European Conference](#) (“Debate on Metaverse: Will Arbitration be the Arena of Web 3.0 Conflict? A Dispute Resolution Minefield Coming from the Future”) and the [“First-ever Virtual Reality Arbitration Conference”](#) organised by [MetaverseLegal](#).

6th ICC European Conference Panel on “Debate on Metaverse: Will Arbitration be the Arena of Web 3.0 Conflict? A Dispute Resolution Minefield Coming from the Future” (28 March 2022)

The panel was moderated by [Professor Crenguta Leaua](#) (*Leaua Damcali Deaconu Paunescu – LDDP*) and featured [Sophie Goossens](#) (*Reed Smith*), [Elizabeth \(Lizzie\) Chan](#) (*Allen & Overy*) and [Yat Siu](#) (*Animoca Brands*).

Professor Leaua described the relationship between the metaverse and ordinary reality as [two of the layers of the world in Greek mythology](#): Olympus, the layer of the Greek gods, and Earth, the layer of humans created by these gods. Each layer is governed by a different legal order.

Sophie Goossens followed up the discussion by stressing that traditionally, ownership, as a legal concept, has been understood as a right against the State. This means that what can be owned or not owned is up to the discretion of elected or appointed legislators. As of today, digital data is considered by most legal systems as free-flowing information that is not susceptible of being appropriated, which explains why the idea of creating public and non-falsifiable certificates associated with digital data has emerged: the Non Fungible Tokens

(NFTs). These tokens – or blockchain certificates – give rise to novel concepts of ownership which disrupts the traditional categories of Intellectual Property (IP) rights as we currently know them.

Yat Sui mentioned that due to the traceable nature of blockchain, it is quite easy to spot any irregularities such as theft. Recovering those stolen pieces is, however, not straightforward as one needs to form a consensus in blockchain to make any change.

On the issue of the law or laws applicable to metaverse-related disputes, Sophie Goossens noted that generally in IP disputes, the governing law is the law of the country where the harmful event took place. However, this approach may be difficult to apply in the virtual world, where the place of a harmful event can be hard to identify (e.g., it is not clear where the place of upload, server or access is).

Lastly, Lizzie Chan touched upon the jurisdictional and dispute resolution aspects of metaverse-related disputes. In most commercial contracts, the question of who has jurisdiction is usually a matter of parties' choice and the same principle would apply in the metaverse. Lizzie explained that existing disputes include IP claims involving NFTs and alleged cybersecurity breaches. It is possible that we will see a growing number of small-scale transnational disputes. Users are likely to expect dispute resolution processes to be speedy, efficient and affordable, and to achieve these goals may be willing to sacrifice high standards of due process. Against this background, Lizzie considered at least three possible dispute resolution tools for resolving digital disputes: (i) "traditional" dispute resolution in the courts or through arbitration, (ii) "modified" international arbitration, where the rules of "traditional" arbitration are modified for digital disputes, and (iii) decentralised justice systems, which combine blockchain, crowdsourcing and game theory in online dispute resolution.

First-ever Virtual Reality Arbitration Conference (30 March 2022)



Paris Arbitration Week 2022 was proud to host the first-ever arbitration conference in the metaverse. To understand the issues arising out of the disputes that will emerge from the activities in the metaverse, it was necessary to situate that conversation in the metaverse itself. Without experiencing it, without the emotion that comes from high-fiving another person virtually, the conversation would be too abstract.

Introduction to the Metaverse, Web 3.0 and their Key Features

Lizzie Chan introduced the metaverse as a persistent digital world in which we each have a presence. It is at the heart of web 3.0, the third generation of the Internet, defined by (among other factors) decentralisation, i.e., the idea that the Internet is owned by many and no one actor can own or control it.

The metaverse must be seen in the context of the digital economy. Already today, seven of the world's ten largest companies by market-capitalisation offer either a window to the digital world like Apple and Microsoft; monetise our attention in the digital world like Facebook, Alphabet and Amazon; or produce the semiconductors which enable the digital world like Nvidia and TSMC. As we spend more time in the digital world, the digital economy will grow with it.

Some of the key features of the metaverse include: users participating as avatars, the use of immersive technologies such as virtual reality; the use of digital assets; the existence of centralised and decentralised metaverse platforms; and the ability to enjoy a wide range of experiences.

Disputes that Can Arise in the Metaverse

Juliette Asso-Richard then presented examples of disputes that can arise in the metaverse, which include (i) disputes between users and metaverse platforms and (ii) disputes amongst users only.

Regarding the first category, disputes concerning the violation of users' personal data are to be expected, as it is virtually impossible for platforms to indefinitely guarantee to their users the absence of hacking attacks.

Disputes concerning virtual real estate are also to be expected, as volumes of transactions have recently skyrocketed (USD 500 million in 2021, expected to double in 2022). What increases the value of a specific plot of land is not only its location but also its scarcity (as most metaverse platforms guarantee a limited number of available plots). But what if the metaverse platform decides to change the surroundings of a user's expensive parcel, for example, by removing the sea in front of what he or she bought as an expensive waterfront land? Or what if it decides to increase the number of plots available? In either case, the platform's actions would adversely affect the value of the user's virtual real estate investment, which may lead to a dispute. This would be even worse if the metaverse platform goes bankrupt or shuts down its servers.

As for disputes amongst users, in addition to the usual crime and tort disputes replicated from the physical world (e.g., theft of a digital asset or sexual harassment between avatars), one will also see disputes regarding transactions between users. This is because in the metaverse, users can, *without any control of the platform*: (i) offer services to other users (e.g., gaming experiences, concerts, life or sports coaching sessions); (ii) create digital assets (e.g., wearable items, accessories, art) and sell them to other users; and (iii) rent or resell parcels of virtual land to other users. These transactions will undoubtedly give rise to many disputes, especially as their volume and value increase.

Status Quo of Dispute Resolution in the Metaverse

Emily Hay followed up with a summary of how matters stand in relation to dispute resolution in the metaverse, in terms of disputes between a user and a metaverse platform, and disputes among metaverse users.

For disputes between a user and a metaverse platform, the starting point is to check the terms of use that the user agreed to. Almost all platforms will set out a law applicable to the terms, and a dispute resolution method. Some specify arbitration, such as Decentraland (**ICC arbitration, seated in Panama City**) and Oculus (**AAA Consumer Arbitration Rules**). Several terms contain references to small claims courts that may have jurisdiction in addition to other options, and carve-outs specific to IP disputes. It may also be necessary to consider other mandatory laws such as data protection and consumer protection affecting the validity of these terms. In sum, it is a complex exercise even to determine the rules of the game.

As for disputes between two users in the metaverse, these could arise in different contexts that may affect the resolution of a dispute, i.e., whether it is a C2C, B2C or B2B dispute.

Some challenges include: (i) determination of applicable law, since the terms of use do not generally cover user-to-user disputes; (ii) how to determine the parties to the dispute, when the avatar of the counterparty is not identifiable, or may even be programmed by Artificial Intelligence (AI) technology; (iii) determining the jurisdiction of a decision-maker, where concepts such as the place of business and targeting of specific markets might be meaningless; and (iv) enforcement of outcomes, especially in relation to digital assets.

Using experience in web 2.0 disputes, existing dispute resolution tools can be tailored to the metaverse, especially if there is a separate dispute resolution clause in place between users. However, the metaverse both amplifies existing challenges and creates new ones.

Decentralised Dispute Resolution

Ekaterina Oger Grivnova then presented one of the alternatives to traditional dispute resolution – decentralised justice, which is an online dispute resolution service supported by blockchain technology. The offer differs from one platform to another but the key innovations include three things:

- Randomly-selected jurors: once a dispute arises and a party refers the dispute to arbitration, the decision-makers are automatically drawn from the pool, pre-constituted

by the platform. Sometimes, the jurors can preserve their anonymity in the exercise of their role. This can be a solution to the well-known issues of bias and conflict of interests;

- On-chain enforcement: this type of enforcement involves smart contracts. Smart contracts are programmes stored on a blockchain that run when predetermined conditions are met. Smart contracts can be guaranteed by cryptocurrency or digital assets. It means that when the parties conclude a smart contract, they can deposit into that smart contract a certain amount of cryptocurrency or NFT, allowing automatic transfer of the staked assets when the debtor meets its contractual obligations or, in case of a dispute, when the decision-makers rule that the contractual obligations are met;
- Anonymity: with decentralised justice, users can connect to the digital court with their cryptocurrency wallets, which guarantees – to a certain extent – anonymity of the wallet holder.

Those innovations are supposed to make justice more efficient, affordable and suitable for the digital economy.

Conclusion

The discussion in the virtual reality conference was very much like a real-life conference. The technology is still glitchy and the headsets are quite heavy so the conference could not last very long so the speakers only really had the time to scratch the surface on the various issues. Much thought still needs to be given to the existing and upcoming opportunities and challenges that the metaverse will present.

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