June 02, 2023

This is part two of a three-part series.

Virtual worlds now defy geographical limitations and companies are invited to connect with markets in creative new ways, leading to legal questions and issues.

On May 18, 2023, BLG's Julie Bogle moderated a discussion with a panel of industry experts and lawyers including Ryan Kieffer, chief metaverse officer and chief operating officer at TerraZero Technologies Inc.; Scott McKinney, technology transactions partner at Wilson Sonsini; Mortiz Holm-Hadulla, competition/antitrust partner at Gliess Lutz; and LuAnne Morrow, intellectual property counsel at BLG to discuss how certain domestic laws apply in virtual environments and how to protect your intellectual property.

Below is a summary of how existing laws in various jurisdictions can be applied to metaverse-related issues in Canada, the U.S. and Europe. To get full details on what legal issues companies operating in the metaverse need to be aware of, check out the full 30-minute webinar recording or skim the transcript*.

Current metaverse laws across jurisdictions

As emerging technologies develop, governments need to review existing laws and explore whether new legislation or common law should be developed around certain issues, including the metaverse.

Europe

There is no dedicated metaverse laws in Europe; however, all the existing laws, such as privacy, consumer protection and IP laws, are applicable. In addition, some laws that are tailored towards the digital economy more broadly will have an impact in the emerging metaverse space. Two examples include:

1. Europe's *Digital Services Act*, a platform law dealing with take down obligations to fight fake news or hate speech and combat dark patterns.
2. Europe's *Digital Markets Act*, which only applies to very large platforms, but has far reaching obligations that could play a role in the metaverse such as data portability rights, and rights of users to access that data from one platform to another.

There are rules and regulations dealing with security and safety of AI systems and cyber resilience in the pipeline. The EU is awaiting a policy communication from the European Commission that is specifically going to deal with regulatory needs in the metaverse.

U.S.

Like Europe, there are no (or very few) statutes in the U.S. that that would apply solely to the metaverse. The existing laws and frameworks of the U.S. – privacy laws, U.S. intellectual property laws, and the statutes and frameworks that internet-based companies rely on to operate in the U.S.— are applicable to the metaverse. For example, the *Digital Millennium Copyright Act*, which internet providers rely on to insulate themselves from copyright infringement claims based on content that their users upload to the platform, would apply to the metaverse.

Canada

Canada also has a similar outlook to Europe and the U.S. There is currently no legislation that is specific to the metaverse, but there is some AI legislation in process that might have some impact in the space.

Canada has been quite progressive in terms of privacy laws (provincially and nationally) and privacy legislation is continually being updated. However, if bespoke interpretations need to develop through common law, it will likely be a slow process due to Canada's market size.

Canada's legal landscape is heavily influenced by both the EU and U.S., and therefore Canada is likely a long way away from seeing any real implementation of metaverse-specific laws.

Find out more

To better assist companies on their digital transformation journey, BLG's 3-part webinar series covers artificial intelligence, the metaverse and the Internet of Things. If you have any questions about jurisdictional laws applied to metaverse-related issues, or other topics covered in this series, please reach out to any of the authors or key contacts listed below.

**Recording and transcript are available in English only.*

Read Full Transcript Here

TRANSCRIPT – EMERGING TECHNOLOGIES
SERIES METAVERSE – MAY 18, 2023

Julie Bogle	Hello, and thank you for joining us this morning afternoon evening, all over the globe we really do appreciate you taking time out of your day to learn a little bit more about this emerging sector called Metaverse. So, I'm thrilled to be joined by leaders in the industry and legal space to discuss the Metaverse today. We'll get into each of the speaker's backgrounds shortly, but to be sharing the stage with the chief Metaverse officer, and lawyers from Canada, Germany, and the U. S. is an honor. My name is Julie Bogle, and I'm a partner in the capital and corporate markets group at Borden Ladner Gervais and I'm a member of our firm's digital assets and Metaverse group. So really, what is the Metaverse? As McKinsey states "The Metaverse is an emerging 3D enabled digital space, that uses virtual reality, augmented reality and other advanced Internet and semi-conductor technologies, to allow people to have life-like personal and business experiences online". So, as you can see, that's a fairly broad definition for an emerging technology. And as more and more big and small companies enter the space, I want to touch on a few key assumptions that people have about the Metaverse. There are both public and private Metaverses and Metaverses can be decentralized or centralized. For example, many people first understood that a Metaverse would be Web 3 enabled, and users would own their own data. However, there are some ... that's not going to be the case for some private Metaverses. A Metaverse may or may not be crypto enabled. There are certainly a good use case to connect some cryptocurrencies to a Metaverse, but it's not an essential element of all Metaverses. And there's not just one Metaverse. There are lots of different types and players in the space. Some of you have heard of groups like Decentraland, Metaverse Horizon World, Roblox or Sandblox. Sorry Sandbox. And some of the primary business uses for the Metaverse include commerce, attending virtual events, such as concerts or fashion shows, or training and education. So now turning over to our speakers, I'm gonna start with our legal experts Scott, Morris and LuAnne. Can you please introduce yourselves noting the area of law that you practice in as well as the types of legal issues that your firm has assisted with in relation to the members?
Scott McKinney	Sure, thanks. I guess I'll go first, so my name is Scott McKinney. I'm a partner at Wilson Sonsini in our technology transactions group. And I specialize in helping start up technology companies and technology companies of all sizes navigate new and interesting frontier technologies. I also teach a course at Georgetown Law on artificial intelligence, and, of course, at Columbia Law on frontier technologies, including the Metaverse. I help companies in the Metaverse do things like, set up marketing campaigns, sort of enter into the Metaverse, navigate sort of in the customer issues associated with the Metaverse, um, and I also help companies that want to set up their own Metaverse, for example, in the gaming space company, like Blueblox and those types of providers of Metaverse. It's good to be here today.
LuAnne Morrow	Thanks, I'll go ahead. I'm LuAnne Morrow. I'm a partner with BLG in the intellectual property and privacy groups. I'm called to bar in Alberta and California. I have particular expertise in trademarks, copyright, advertising and consumer issues and I work extensively with clients operating in multiple jurisdictions to navigate regulatory compliance and IP right protection and enforcement. Our firm has assisted clients with privacy issues, IP protection and jurisdictional issues related to the Metaverse and we expect those areas only to expand.
Moritz Holm-Hadulla	So, I'll go next. Good morning and thanks to BLG for inviting me to this great panel. My name is more Moritz Holm-Hadulla. I'm an anti-trust law partner at Gleiss Lutz in Germany. I'm mainly focused on the digital economy with matters relating to ad tech, inner payment, digital maps, addressable TV, and also digitization of more, let's say traditional industries, such as automotive. I'm also adding the firm's digital economy group and recent matters we've been advising on out of this group, relate to a large extent to NFT Projects, um, also brand protection, um, making clients' trademark portfolios fit for the Metaverse. Of course, GDPR is always in the mix as you can imagine. And also, a couple of Metaverse related M&A deals as well as commercial transactions.
Julie Bogle	Great. So it sounds like from a legal end we've got it all covered. So, Ryan, can you tell us a little bit about TerraZero and what a chief Metaverse officer does.
Ryan Kieffer	Sorry about that. Yeah so at TerraZero we build products and services that help bring companies and individuals into the Metaverse. So, we are introducing our Interverse tech staff, which we're actually launched like 3 weeks ago, now with a Warner music and BeBe Rexha, so as a chief Metaverse officer and chief operating officer, I work with brands, companies to figure out what their, what their course of action is to get into the Metaverse. Figure out why they're doing it. What's actually a reason to do it? Not just a splash play. How, what their long tail visions going to be from you know, not 1 month, I'm in here, but the next 5, 6, 7, 10 years. And then figuring out, working with legal teams internally, usually working with marketing teams, working with internal stakeholders, to figure out how do they keep their IP safe? How do they, what are the possibilities, uh, possible areas where they could get in trouble, or anything like that? And then also helping with crypto or blockchain based things. We typically recommend, and I've moved away companies to move away from crypto because the CFO'S don't like it. The lawyers don't like it. Um, it's, it's just a giant unfortunate pain to deal with. So that's kind of where a lot of the work is that I'm doing.
Julie Bogle	So, in terms of the areas that Metaverse companies are kind of working with law firms on you mentioned IP, you mentioned that maybe crypto's a bit of a pain point. Are there kind of other intersections between law and the Metaverse that you're seeing not only within TerraZero, but also the companies that you're working with, that are trying to enter this space and how can lawyers help?
Ryan Kieffer	Yeah, so it's quite a large variety. I actually went to law school, so this is, this is like panels kind of cool for me to be on. I'm not a lawyer. I want to say that out loud. I know I have to, but 'disclaimer' so, for the ... I mean, it's payments. That's a huge thing. Figuring out, now, what do [in scene] payments look like. That's something we're creating. Data protection and data migration in a decentralized world because it's very unsafe to be putting through anything. So we don't, don't do anything that involves getting data from anyone one, then there's, you know, asset protection. If I do have NFTs, or if I do have crypto, how, what do those assets mean? How do I keep them safe? So, there's all sorts of things. There's just general IP protection. There's all the GDPR stuff. Uh, what else have we covered? A lot of IP protection as well. We worked with a lot of brands. We work with television shows. So, it's like a brand within a brand and then there's the corporate brands and then there's the brands underneath that. So, a lot of trademark issues, a lot of, um, a lot of copyright issues. A lot of stuff that's not coming up with AI as well. What's the.... and how that interacts with the Metaverse, so that you can create scenes and put art from an AI into the Metaverse. So there's just so much variation I can go in and honestly, like, we use lawyers all the time, because it's such a new space. We only can ... there's not much case law on anything yet so there's nothing we can really point to. And, then it's also very global, so the, it varies greatly from jurisdiction to jurisdiction. So.
Julie Bogle	So, with that as a background or context Moritz, Scott, Leanne, do we have existing laws in your jurisdiction that are applied to the Metaverse or is new legislation being proposed or new common law being developed that is specific to Metaverse issues. Why don't I start with Moritz, kind of speaking from Germany and the EU, we'll move to Scott in the US and then we'll round it out with Luanne in Canada.
Moritz Holm-Hadulla	Sure, yeah. Happy to start. I mean, as you can imagine there is no such thing as a dedicated Metaverse code in in Europe. Right? So but of course, all the existing laws are fully applicable, like, IP laws, privacy, consumer protection and I trust. There are some laws in the rule book that are not tailored towards the, the, Metaverse as such, but the digital economy more broadly, and those rules certainly will have an impact also in, uh, an emerging Metaverse space, such as for example, the *European Digital Services Act*, which is kind of a platform law that deals with things, like take down obligations in order to fight fake news or hate speech that is also meant to meant to combat dark patterns. So, those rules are certainly going to have an impact on the Metaverse. Same holds true or could hold true for the *European Digital Markets Act*. That Act has quite a high entry threshold, right? It only applies to very large platforms, but once it applies, and its obligations kick in, it has very, very far reaching obligations that could play a role in the Metaverse, like, data portability rights, or right, rights of users to access that data from one platform to the other. Side loading rules of which allow, uh, developers to bypass any proprietary app stores. Prohibitions to tie inner payment systems to a platform or an app store, which can, of course, have a huge impact on monetization strategies. So you, you name it and there are a couple of more rules and regulations in the pipeline dealing with, uh, security and safety of AI systems, cyber resilience. We're actually awaiting a policy communication from the European Commission

	anytime soon that is specifically going to deal with the Metaverse and regulatory needs in the Metaverse context. So, there is a digital rulebook. There are traditional rules that are applicable. They also, I mean, there's a lack of case law, of course, like Ryan mentioned, but these rules seem to be fairly flexible and broad. I think the main difficulty is really in the decentralized and decentral structures really, even finding the applicable law, let alone enforce it, in these structures, so that will be probably the main challenge.
Scott McKinney	Yeah, thanks. And, and so speaking for the U.S., you know, the U.S. landscape, illegal landscape, is essentially the same or very similar to what Moritz just outlined right? So there are no Metaverse specific statutes or very few in the U.S. that that would apply, and the laws that we look to, um, to apply to the Metaverse, are the existing laws of the U.S. and the existing frameworks, and so, you know, key laws will be the, the privacy laws, U.S. intellectual property laws, um, you know, the statutes and frameworks that Internet based companies rely on in order to operate in the U.S. are very applicable to Metaverses. So, for example, there's something called the *Digital Millennium Copyright Act*, which platform providers, uh, on the Internet have relied on for many years in order to insulate themselves from copyright infringement claims based on content that their users upload to the platform. So that *Digital Millennium Copyright Act* would also apply to, you know, uh, to Metaverses so, if someone, um, introduces an NFT or some new content into a Metaverse as a user, then presumably the Metaverse provider can rely upon the *Digital Millennium Copyright Act* to insulate itself from copyright infringement liability, if it sort of checks the boxes with respect to what it has to do in order to benefit from that protection. In the U.S, we don't have specific laws. We don't have a specific legislation. Although I think it is at an advanced enough state that I expect it to pass soon. And instead of been applying the existing framework, and the existing principles to the Metaverse. Another example I'll mention quickly is, you know, many brands use the Metaverse as a marketing opportunity and so we often get questions uh, sometimes I'll represent big, big brands that want to do a marketing campaign in the Metaverse or buy space, buy land in the Metaverse and set up shop there as a marketing tool and they will ask 'well, what are the marketing rules in the Metaverse?' And the answer is, 'it's the same rules as if, you know, you were marketing on the Internet'. So you need to be careful of copyright infringement, make sure that you're not claiming anything that's deceptive or inaccurate, uh, to the, the consumer and basically follow the same rules of the road as if you were making a post on social media, or putting something up on a website, or developing a commercial that's going to run during the Super Bowl.
LuAnne Morrow	You know, Canada has a very similar outlook as well. I think what we'll see here in Canada is again, we don't really have anything in the way of legislation that is specific to the Metaverse, that's pending our upcoming. We do have some AI legislation that's working its way through the process so, that might have some impact and in this space. But I think generally speaking, we'll see what's happened typically in Canada, particularly in the intellectual property law space is that, uh, we take the laws that exist and we try to apply them to these new technologies and to these new platforms and sometimes that's successful and sometimes that's a little bit more problematic. We tend to not have a lot of ..., you know we just don't have as much case law generated as we might see in the United States. So, in terms of how quickly the common law will adjust to new platforms I think it'll, it'll be a slower process in Canada than it is in some other jurisdictions. I think there's 2 areas that I could see where there's gonna be, I think, maybe more movement or more concern, and one of those areas is in privacy. Because Canada has been quite progressive in terms of privacy laws, and each of the provinces and nationally, um, the privacy legislation is continually being updated and there's a lot of movement in that area. And I can see where, you know, particularly things like the changes in Quebec that have impact on tracking individuals, tracking activity could be quite applicable in a Metaverse, sort of situation, because if, for example, if an advertiser wants to track, the amount of time, someone spends looking at something, in the Metaverse, how is that impacted by, you know, privacy laws that say you can't track or you can, but you have to have consent. So I think the issues around consent and privacy and data are going to be, uh, issues that keep coming up and I think are going to be more addressed in in the privacy legislation. Um, and I think too that what's somewhat interesting about the Canadian perspective is because we're a smaller country and we're heavily influenced by both the EU and the U.S, I think you'll see what has often happened with a lot of our legal landscape, which is, we take from other countries, we learn from other countries and quite honestly, the law of other jurisdictions may in fact, be what has applied to many Canadian consumers, just by the nature of you know, where, where these larger Metaverse companies or people, you know, companies in the Metaverse are situated. So, I think we'll see some of that as well. Um, and I think the, the one other area that ... and I think Scott you touched on this just briefly, but I do see potential for consumer issues because Canada is, it tends to be a much more consumer friendly, uh, jurisdiction, particularly the larger provinces and there's quite a lot of active regulatory um oversight in the area of consumer issues, and I can see where the Metaverse might present, you know, some, some similar issues that we already see, but maybe amplified. So it'll be very interesting to see how regulatory bodies are able to kind of keep up with that, cope with that. And whether they even go down, go down that road even now. So, I think I think it's gonna be some it's gonna be a long time horizon in Canada, uh, to see any kind of real new changes to the laws.
Julie Bogle	Yeah, and, I mean, I'm not surprised by your answers that, you know, we're not ... no jurisdiction is really creating new legislation to deal with this. But I think what more touched on, which is, how do we deal with the decentralized platforms is really an emerging issue, that is, is a global matter. It's not one jurisdiction, and I think that's something that is going to just be a challenge for the industry and for regulators to ensure that consumer protection to concern the retail investors to have all the interested parties protected adequately, but in a global fashion. So stay tuned. I guess we'll have to see what regulators choose to do, or if they choose to work together on that. So, one thing that Ryan touched on is the first kind of pain point was around intellectual property for the Metaverse. So, Luanne, Scott, how do persons protect their intellectual property in the Metaverse and are there any differences between Canada and the U.S. So, maybe we'll start with Luanne. And then and then hear from Scott from a U.S. perspective.
LuAnne Morrow	Sure, yeah, I think, uh, as we've said, the, you know, the, the current laws are, what is, you know, what are we're using now to help our clients protect their intellectual property certainly in the trademark space, I think that's where trademark owners need to really think about, where they're going to be using their trademarks and expanding perhaps the goods and services that they that they see coverage for when they make applications for registration. I think there's going to need to be more of a monitoring of uses of trademarks within the metaverse so that adds a complexity I think maybe to the protection space and activity that you need to take as a brand owner. But there's a lot of opportunity as well. Opportunity for licensing, opportunity for collaboration. I think we've seen some very large brands like Nike collaborating with smaller sort of NFT based businesses. So I think there's real opportunity for brand owners, but there's some challenges and there's a real need to sort of get your head around what's going to be your activity in the metaverse as well. So, I think expanding your, your, your IP portfolio, in terms of trademarks, for sure, your registrations, you need to consider have I covered Class 9, have I specified metaverse activity just to capture the, the use that you might make there and then I think on the copyright side again, it's going to be similar, you know, the laws that apply now will continue to apply. I think the interesting thing will be, uh, creations within the metaverse and how that's dealt with by the traditional laws. I think that that could be quite an interesting space, especially when you add AI into the mix. But, you know, right now what we're advising clients to do is really, you know, how can we use the existing laws to their advantage and then how do you create more awareness within your own company as to how you're going to protect and capitalize on your IP in a metaverse environment.
Scott McKinney	Yeah, thanks. And, you know, the answer for the U. S. is actually very similar and may be the same, like to just add on to what I was saying so, you know, in the U.S. and generally around the world, I think, you know, users of metaverses and metaverse providers themselves can and should protect their IP in the same way that you would protect it in other scenarios. So trademark registrations, copyright registrations policing the use of your trademarks, et cetera. Certainly to LuAnne's point, brands and company should consider updating or revisiting their trademark registrations to ensure that they are covered for all the uses need to be covered for. I'll say there's a few other things that, on the IP front, that might be relevant to the metaverse to consider, you know. Under trademark law, you know, you have a obligation to, you know, police the use of your trademark and do no quality control for your marks, then you have, you run the risk of losing your trademark protection. And so brands should be cognizant of this and, uh, you know, consider also looking to the metaverse to make sure that no one's abusing your mark just blatantly out in the open for an extended period of time in the metaverse. And, of course, this may be a very new thing for many, many companies or folks that don't have their headsets. But it's something to be considered. Another consideration for the metaverse is, most of the metaverses have, you know, terms of service of different types, including both decentralized and centralized metaverses. Those terms of service often include things that will protect the metaverse providers and could implicate or raise certain issues for companies that operate in the metaverse. So, for example, usually those terms of service say that if you as a user of the metaverse or a company that exists, or operates in the metaverse, you upload or create content in the metaverse granting the metaverse itself a broad license to use that IP and content. And so I think my point is, metaverses themselves, protect themselves on an IP front from things like terms of service as well as, you know, existing statutes like DMCA in section 230 of the *Communications Decency Act* here in the U.S. But it's also really important to read the fine print and understand what you're agreeing to, uh, in the terms of service, uh, agreement when you're operating or using the metaverse.

LuAnne Morrow	Sorry, I was going to also add the other thing to think about just in terms of that sort of contractual piece, is if you are a licensee of a trademark copyright and it's based on a territory that's going to be an interesting - that could potentially be an interesting question if you wanted to make use of that license to IP in a metaverse, uh, in the metaverse, it, it so that it as well has sort of implications as to, you know, how, from a licensor perspective as well as a licensee perspective.
Julie Bogle	Yeah, we're running short on time so Moritz, really quickly, are there any potential competition or anti trust elements that governments are considering as the metaverse continues to evolve?
Moritz Holm-Hadulla	I mean it applies what I've been saying before that the anti trust laws, of course, are fully applicable to the metaverse and there are a myriad of violations that all haven't happened yet at least not to our knowledge. So, you might speculate on what practices emerge and could become relevant. Of course, there are things which are maybe a bit more prone to becoming relevant in the metaverse in a space like algorithmic collusion authorities have been very quick to point out that price algorithms can violate the antitrust laws even if no human interaction or intervention is involved. So, users or sponsors of algorithms have to ensure that those algorithms are compliant by design, so that's one area. There are others like restrictions to platforms or data on platforms that are discussed under antitrust laws or things like most favorite nations causes whereby assets cannot be sold at a lower price at one platform. So those could be provisions that are falling afoul of antitrust laws. Again, I guess here again is the main question is how to, to enforce really and decentralize structures and even how to bring practices to an end. I mean, if there is a most favorite nation clause, and enshrined in code and put on a black blockchain, that is then available on decentral nodes across the globe, then it's probably quite a stretch to really enforce. And I trust that is something that authorities understood, trying to hiring the right people which is tech experts and employing artificial intelligence themselves to, you know, unearth, uncover and enforce these practices.
Julie Bogle	Interesting. So, I'm going to ask the last question to Ryan, but Andrew can you please put up the slide with our - if anyone has any other questions cause we may have raised more questions and answered in some of these dialogues, please do reach out to me. I can get in touch with the panelists. We'd also love to hear your feedback on this seminar so, if you can just use that QR code to fill out a short survey. And while you're kind of looking at that information, Brian, do you have a sense of how metaverse companies are dealing with the legal issues noted above and are companies kind of doing a wait and see approach or are they being proactive and trying to join industry groups to clarify, like an industry position and improve the dialogue between the industry and regulators? Like what's happening on the ground?
Ryan Kieffer	Yeah, so a couple of different answers for you, some groups, who like to deal more on the decentralized world, probably don't care too much about the legal issues, if I'm being one hundred percent honest. Then there's us, who care very much for the legal issues, where, you know, we're probably one of if not the only pure play metaverse company that's actually insured as well. So, it's one of those things, but then there's like metaverse standards forms that you can join that's a really aspirational thing, that where everyone's going to be able to have the same standards across the board. Will it happen? We'll see. I don't know. But hopefully. And, then just really just trying to stay in front of it as much as we can using the laws that are currently in place and then not crossing too far in a gray area we just don't feel comfortable in. ;Some people obviously are willing to push the boundaries more than others, but it's just whatever it is, but we work with really large clients, like, Fidelity International and like, Price WaterhouseCoopers and they're very conservative firms and they're not going to work with us if we're taking huge risks and putting ourselves in places with liability. So, that's kind of how we operate, but, you know, it's probably a pretty big spectr of how people care about the wall and whether they want to stay in between it.
Julie Bogle	Yeah. Yeah. That's, that's great insight. Well, thank you all for joining. Thank you panelists and hopefully we are able to connect on LinkedIn and continue the dialogue. Take care have a great day.
Ryan Kieffer	Thank you.
Moritz Holm-Hadulla	Thank you.
Scott McKinney	Bye, bye.
LuAnne Morrow	Thank you.

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