

# Key legal issues in the metaverse: A primer for Canadian businesses

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At a baseline, the metaverse is a constellation of different technologies that stand to transform the internet from a two-dimensional experience to a something that is far more tangible and immersive. This contemplates engagement in the metaverse for meetings, commerce, employee training, among other activities. In addition, the metaverse does not have national boundaries, so determining the applicable law may not be straightforward and instead may be influenced by the metaverse platform's terms of service, or the smart contracts entered into within the metaverse and the location of the persons transacting within the metaverse. The current unregulated nature of the metaverse presents legal risk as well as significant commercial opportunity.

In this introductory article of our multi-part series on the metaverse, we explore key legal considerations for the developing the metaverse ecosystem.

## Competing and cooperating between Metaverse sector participants:

Interoperability is a [key feature of the metaverse](#) and presents a significant challenge for businesses looking to move into the space. In theory and much like the real world, industry participants would want to ensure that there are zero barriers to entry between metaverse spaces. Akin to two large retailers in the real world, while they may compete against each other, both are keen to ensure that infrastructure around their stores provide potential customers with easy access to both stores.

Similarly to the example above, users will want to move through different metaverse spaces. As such, like two competing retailers, metaverse industry participants, especially those who develop metaverse platforms themselves, will need to cooperate in order to create a seamless and barrier-free experience for consumers moving through metaverses. However, unlike the real world, cooperation between two metaverses is not as simple. Cooperation requires trust and brings significant legal risk as businesses may be forced to share trade secrets or proprietary information in order to ensure that users are seamlessly able to transition between what are, in reality, competing platforms. Traditional intellectual property sharing agreements, confidentiality clauses, and partnership agreements may not sufficiently protect the interests of parties who may be

required to cooperate at a much deeper level than they are traditionally accustomed to in real world transactions. Moreover, parties looking to cooperate with each other to reduce barriers to competing metaverse spaces will need to clearly delineate responsibility for potential privacy and cyber security risks in contracts. Especially in situations where the parties are located in different jurisdictions.

To meet these challenges, parties will need to be creative, adaptive, and may need to incorporate non-traditional contractual arrangements, including the use of smart contracts to ensure that they create the level of protection required to cooperate while competing.

## E-Commerce in the Metaverse:

The metaverse represents an emerging space for digital asset sales. For instance, **Non-Fungible Token (NFT) auction houses exist but are not truly immersive. As the natural successor to the conventional internet, the metaverse could create a truly digital market with the hallmarks of a real-world market where people can engage and interact with a digital item, at an almost tactile level. It is clear why industry-leading technology companies are moving quickly to seize the opportunity that digital commerce in the metaverse represents. That said, there are novel and traditional risks that must be considered**

Analysts assess that e-commerce in the metaverse could be worth \$3 trillion dollars within the next decade. The metaverse represents a potentially massive market for traditional goods that can be examined, purchased and delivered to the customer virtually. Also, metaverse technology like augmented reality glasses or virtual reality headsets can be used to transform work, healthcare, and education.

From product liability concerns regarding physical equipment that customers use to engage with digital items, to privacy concerns, to tax and consumer protection risks, these hazards of doing digital business must be weighed and balanced against **opportunities. For example, marketing and advertising claims in the metaverse that may abide by applicable legal and regulatory requirements in the jurisdiction in which they were created may, nonetheless, generate regulatory liability in the jurisdiction in which they are relied upon by the ultimate consumer.**

Those looking to do business in the metaverse must account for a full-spectrum of risks that may not just be limited to their home jurisdictions. Specifically, the exchange and **sale of NFTs, even digital items such as a digital piece of “land” or clothing on a metaverse platform could create very real-world securities law risks as these transactions may be considered sales of securities rather than goods. In addition to securities law risks, advertising the sale “digital land” is expected to generate truly novel legal issues. Some real property legal concepts and principles are hundreds of years old. Applying them to a digital parcel of land may strain courts and governments, creating unexpected outcomes and law. Finally, and for similar reasons, the tax implications to both parties to a digital transaction may have unexpected or novel tax repercussions.**

Businesses looking to digitally go to market in the metaverse must take pro-active steps now to assess real world regulatory landscapes in their home jurisdictions and

internationally that may be imposed on them as a function of the physical location of their digital customers.

## **M&A in the Metaverse:**

**M&A activity has already begun and appears to be poised to increase.** M&A with metaverse-based businesses creates unique issues for the acquirer and target. Traditional corporate considerations and risks become more complex. The nature of the metaverse itself plus the inherent risk associated with buying assets or business models that cannot work or do not exist in the real world creates material and unique challenges to effectively valuing and then legally structuring an M&A deal. For instance, how do parties quantify the risks around the purchase of a company that sells a digital asset that cannot be converted into something tangible. What kinds of representations and warranties could a wholly digital company who transacts in digital currency or NFTs give about its ability to generate real world currency. For example, a real world shoe manufacturer may think it is acquiring a digital shoemaker but in reality, may be acquiring an unlicensed seller of securities. Finally, as metaverse spaces consolidate there may be real-world competition risks that parties must consider.

Notwithstanding the complexity of these issues, effective planning and creativity can assist dealmakers and experienced corporate counsel to find ways to create value while minimizing risk in a space poised for growth for M&A transactions.

As the metaverse continues to evolve, businesses looking to capitalize on the opportunities must embrace creative contractual arrangements while ensuring that they properly hedge against the very real legal risks that will likely grow as the sector becomes more mature and complex. Involving legal advisors early is an effective way to deal with some of the uncertainty that doing business in a new and virtual sector entails.

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