



Disputes in the Era of Meta Worlds: the role of arbitration



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The metaverse is envisioned as the future of the internet. Experts predict that by 2026 25% of the population will be spending at least one hour a day in this intriguing space for work, shopping, education, social media or entertainment.¹ It is estimated that this space –the global metaverse market– will reach USD 8 trillion by 2030.² Moreover, metaverse Exchange Traded Funds ('ETFs') could amass USD 80 billion in assets by 2024³ and USD 54 billion were spent on virtual goods in 2020.⁴ Naturally, these figures have caught the eye of tech giants and players from a variety of industries, who are already investing heavily in this booming phenomenon.

¹ A. Gupta, 'What Is a Metaverse?' (28 January 2022) <<https://www.gartner.com/en/articles/what-is-a-metaverse>> accessed 23 September 2022.

² Exchanges at Goldman Sachs 'Understanding the Metaverse and Web 3.0' (11 January 2022) <<https://www.goldmansachs.com/insights/podcasts/episodes/01-11-2022-eric-sheridan.html>> accessed 23 September 2022.

³ Bloomberg Intelligence, 'Metaverse's \$80 billion ETF assets by 2024 virtually a reality' (23 February 2022) <<https://www.bloomberg.com/professional/blog/metaverses-80-billion-etf-assets-by-2024-virtually-a-reality/>> accessed 26 September 2022.

⁴ J.P.Morgan, 'Opportunities in the metaverse' (2022) <<https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/opportunities-in-the-metaverse.pdf>> accessed 23 September 2022.

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This article aims to provide a brief overview of the concept of the metaverse, an illustration of the disputes that may arise within and in relation to it, and a discussion about the dispute resolution mechanisms best tailored to address those disputes, including the opportunities that arbitration may benefit from and the challenges that it could face.

An evolving concept

Before we dig any further into the metaverse, we must tackle the first contentious point: what exactly is it? The metaverse has been defined as 'a collective virtual shared space, created by the convergence of virtually enhanced physical reality and physically persistent virtual space, including the sum of all virtual worlds, augmented reality, and the Internet' ('Metaverse').⁵ However, a more accurate wording would be that the Metaverse will be what we make it.

The Metaverse is still in its early stages and will continue to evolve and expand as its contributing technologies (blockchain, augmented reality, the internet of things, 5G and artificial intelligence) are developed and additional sectors and technologies are added. In fact, some argue that there is no such a thing as a Metaverse yet, but rather an increasing number of digital

worlds or meta worlds (i.e. Decentraland, Roblox, Sandbox or Horizon Worlds), with each platform –currently– operating independently from each other and generally revolving around the digital economy.

Most importantly, meta worlds are places where and around which transactions take place, and where tokenized goods are bought with cryptocurrency and exchanged via smart contracts. The developing meta worlds offer new ways to connect and interact, which in turn provide companies with new revenue streams and marketing channels. This inevitably brings with it an increase in disputes and the need to resolve them.

Potential areas of dispute

When looking into the different types of disputes that could arise within and in relation to the Metaverse, we must first identify the potential parties involved and the subject matters that could be disputed.

A. Who: potential parties involved

Just like in the real world, there are bound to be disputes in the virtual world. Depending on the players involved, disputes can be primarily classified as (i) platform-to-user or (ii) user-to-user (B2B, B2C or C2C). As providers of the space where interactions take place, platforms will be issued claims from their users, and vice versa. Moreover, given that in the Metaverse users interact with each other, claims will be brought by one

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Metaverse user against another.⁶ In both categories distinguishing between users that are businesses and those that are mere consumers will be important.

Real estate developed in Decentraland is an example. Republic Realm has developed a shopping district where it has leased space to JPMorgan, amongst other companies (B2B) but they are also selling villas to users (B2C).⁷ These leases will most certainly generate disputes, especially given how volatile prices are in the Metaverse. The jurisdiction, applicable law and terms applied to the disputes will likely differ depending on the players involved.

B. What: disputed subject matters

A further question arising in connection with Metaverse disputes is what the subject matter will be. Examples of potential real estate claims have already been mentioned, but there are many more sources of conflict in the Metaverse.

Many unique digital assets are being created for their use in the Metaverse

⁵ W.Burns, 'Everything you know about the Metaverse is Wrong' (25 August 2017) <<https://www.linkedin.com/pulse/everything-you-know-metaverse-wrong-william-burns-iii/>> accessed 26 September 2022.

⁶ For instance, in Meta's platform Horizon World a harassment dispute was initiated when the avatar of a 21 year old researcher was sexually assaulted.

⁷ Everyrealm, <<https://everyrealm.com/mre>> accessed 5 October 2022.



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As evidenced, to date, meta worlds platforms provide for varying dispute resolution mechanisms for platform-to-user disputes, some of which consist of traditional arbitration or country specific national courts

and their ownership is being represented through Non-Fungible Tokens ('NFTs'). NFTs are unique digital representations of assets that exist only in the virtual world and cannot be replicated. They range from plots and dwellings to artwork and clothing. The use of NFTs raises contractual issues regarding the enforceability and formal validity of the smart contracts created for their sale, the verification or infringement of the ownership of an NFT or the liability rules for their destruction or theft.

Also, user-generated content in the Metaverse –such as avatars, buildings or artwork– bring up intellectual property ('IP') issues regarding: (i) the authorship of a work as the users are anonymised via avatars, (ii) the rights licensed or granted, or (iii) the enforcement of the infringement of IP rights.

Moreover, antitrust, data protection and financial regulations will also find their way into the Metaverse. A variety of issues may arise in relation to other rights too, including, property damage, defamation, assault or harassment.

In any case, irrespective of the players and the type of dispute, the nature of the

Metaverse itself raises many dilemmas, including procedural issues such as determining which jurisdiction applies. Therefore, the final part of this article looks at how these disputes might be resolved and, in particular, by whom.

Arbitration as a dispute resolution mechanism for Metaverse-related disputes

An indicator of how **platform-to-user** disputes arising from the Metaverse will be resolved can be found in the standard terms of the different meta world platforms, which contain dispute resolution clauses that mostly cover platform-to-user disputes. The following are examples of mechanisms that are currently being implemented:

- Decentraland, a decentralised autonomous organisation⁸, includes a multi-tiered clause where parties must first engage in negotiations to resolve the issue and if no solution is reached then they can initiate arbitration

⁸ As a decentralised autonomous organisation or DAO, Decentraland has no central authority. Its ownership and governance is decentralised in its users. This means Decentraland is not a legal entity, but a set of smart contracts that allow for opinions on issues to be uploaded and votes to be counted.

under the rules of arbitration of the International Chamber of Commerce (ICC). Under this clause, three arbitrators will be appointed to resolve the dispute, the proceedings will be conducted in English and the seat shall be the city of Panama.⁹

- Roblox, a US-company platform, provides for different dispute resolution mechanisms depending on where its users reside. US residents agree to a multi-tiered clause where a mandatory negotiation period is established before resorting to arbitration. These arbitration proceedings are governed by the Consumer Arbitration Rules of the American Arbitration Association. The negotiation period and arbitration do not apply by default to users who are EU or UK residents, whose disputes might be submitted to national courts.¹⁰
- Sandbox, a Maltese-company platform, establishes the courts of

⁹ Clause 18 of the terms of use of Decentraland <<https://decentraland.org/terms/>> accessed 3 October 2022.
¹⁰ Clause 16 of the Roblox user terms and clause 9 of Appendix C <<https://en.help.roblox.com/hc/en-us/articles/115004647846-Roblox-Terms-of-Use>> accessed 3 October 2022.

Hong Kong as the forum for any proceedings arising from its terms of service.¹¹

- Horizon worlds, another US-company platform, establishes the courts of Ireland as the forum when the user has a business goal and the national courts of the user's country of residence when the user is a consumer.¹²
- Everyrealm, a US investment company, includes a multi-tier clause under which parties must first try to negotiate to resolve the issue and if no solution is reached, they can initiate a JAMS arbitration, under its Optional Expedited Arbitration Procedure conducted in New York County.¹³

As evidenced, to date, meta world platforms provide for varying dispute resolution mechanisms for platform-to-user disputes, some of which consist of

¹¹ Governing law; forum clause of the Sandbox terms of use <<https://www.sandbox.game/en/terms-of-use/>> accessed 3 October 2022.

¹² Disputes clause of the Meta terms of service <<https://www.facebook.com/terms.php?ref=pf>> accessed 3 October 2022.

¹³ Clause 14 of the Everyrealm terms of services <<https://everyrealm.com/terms-of-service>> accessed 3 October 2022.

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traditional arbitration or country-specific national court proceedings. However, these dispute resolution clauses will not always be successfully enforced, as concerns may arise regarding, among others, (i) the validity of the agreement, for instance, from a consumer law standpoint; (ii) matters excluded from arbitration; or (iii) the enforceability of the decision when concerning Metaverse-related assets.

On another note, how **user-to-user** disputes are resolved will depend on the parties' choice. Although recourse to traditional methods (i.e. national courts and traditional arbitration) will remain an option, alternative methods are emerging as an attractive choice geared towards the specificities of these disputes.

User-to-user Metaverse disputes are characterized as being high in number, low in value, not highly complex, cross-border and require a non-costly and fast resolution. As resolving these disputes by traditional methods might prove more expensive and burdensome than the disputes themselves, parties will most likely be reluctant to rely on them. This justice gap is where the opportunity emerges, and new dispute resolution methods such as decentralised justice are already being developed.

Decentralised justice, also referred to as blockchain arbitration, is a system built on blockchain technology where a group of randomly selected peers, guided by cryptoeconomic incentives (i.e. the system rewards jurors who vote in line

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with the vote issued by the majority of the selected jury) make decisions based on blockchain-related evidence that are formulated as smart contracts and are thus automatically enforceable. A variety of providers such as Kleros, Jur, Codelegit and Aragon offer these expeditious and inexpensive services.

However, despite the appeal of decentralised justice methods to resolve these type of disputes, they are not without concern. Some noteworthy aspects include:

- (i) Their scope is narrow and limited by the technology behind them. For instance, not all contracts can be converted into code and the remedy needs to be digitally enforceable. Therefore, these methods cannot be used to resolve all disputes.
- (ii) They might lack fairness and compromise procedural rights. Jurors do not necessarily have any type of expertise, their identity is unknown and they have a vested interest in the outcome of the case since they receive a different economic incentive depending on their vote. Moreover, the parties' opportunity to present their case is limited (restricted to transaction evidence on the blockchain).

- (iii) They might clash with national legal systems. Decision-making and enforcement are considered prerogative powers of national judicial authorities, only waived expressly and on occasion and subject to specific regulations. Therefore, national legal systems may not acknowledge decentralised decisions as being valid (e.g. because they consider that smart contracts do not fulfil formality requirements or that their compatibility with the New York Convention¹⁴ is dubious).

Interestingly, some providers have tried to address these issues by emulating traditional arbitration. For instance, CodeLegit has developed a set of Blockchain Arbitration Rules that establish an appointing authority to appoint arbitrators with certain

¹⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

expertise (e.g. they may be jurists or blockchain technicians). Moreover, the process would also include email communications and potentially oral hearings by video conference.

Conclusion

Traditional arbitration will continue to be a popular dispute resolution mechanism when it comes to Metaverse high-value, complex, cross-border disputes (both platform-to-user and business user-to-business user). As for low-value and mid-complex disputes, decentralised justice might become the preferred alternative. However, the drawbacks of decentralised justice present an opportunity for arbitration to innovate and broaden its reach. Based on these considerations, it appears that arbitration has much to gain in the era of meta worlds. All in all, as with the notion of the Metaverse, the role of arbitration will be what we make it.



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