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# MUSIC IN THE METAVERSE: ARE CURRENT LAWS SUFFICIENT OR ARE NEW LAWS REQUIRED?

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## Introduction

With the advent of the metaverse there have arisen several new legal complications that become more serious due to the lack of precedence and standards.<sup>1</sup> There is a new degree of freedom on the platform that opens possibilities to new forms of crime and misconduct. Hence, the legal issues range from data privacy, cyber security, real life crimes that are replicated on the platform,<sup>2</sup> virtual land disputes, incorporations on the platform, and intellectual property issues. Specific to IP issues, the use of music and its licensing pose big questions on how it will work on the platform. This paper will mainly focus on the issues regarding music licensing and additional legal questions that arise with it. There will also be an investigation into whether the current copyright laws are sufficient in dealing with the issues, or if new legislation is required.

## Definition of “metaverse”

One major issue pertains to the lack of an agreed definition of “metaverse”. What does metaverse entail? The platform provides interoperability and an immersive experience for its users. It is a horizontal space where the user can enter different rooms that co-exist and function at the same time.<sup>3</sup> Every room is hosted by different hosts. As several meta spaces exist at the same time, this provides teleportation like features on the platform.<sup>4</sup> What differentiates the metaverse from most other social media platforms is its decentralised nature. In simpler terms, the metaverse is a virtual reality where users can interact with one another and perform several

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<sup>1</sup> Kumar N, ‘Council Post: Six Unaddressed Legal Concerns for the Metaverse’ (Forbes, 14 April 2022); <https://www.forbes.com/sites/forbestechcouncil/2022/02/17/six-unaddressed-legal-concerns-for-the-metaverse/?sh=3aef7f2a7a94&gt>

<sup>2</sup> Patel N, ‘Reality or Fiction?’ (Medium, 21 December 2021); <https://medium.com/kabuni/fiction-vs-non-fiction-98aa0098f3b0>

A woman from the UK shared her experience of her virtual avatar being verbally and sexually harassed on the metaverse.

<sup>3</sup> Mezei, Péter and Chawla Arora, Gunjan, Copyright and Metaverse (May 10, 2023). Chapter 11 - Copyright and Metaverse, in Michel Cannarsa & Larry Alan Di Matteo (eds): Research Handbook on Metaverse and the Law, Edward Elgar, 2023 (Forthcoming), Available at SSRN: <https://ssrn.com/abstract=4444608>

<sup>4</sup> Ibid.

activities from building one's own avatar, creating their own space, minting non- fungible tokens (NFTs), to conducting and attending virtual concerts, playing games, and more. Considering the things that can be achieved on the platform, there are several copyright dimensions to be looked into.

The aim of the metaverse is to help people build social relations and provide entertainment from the ease of their homes.<sup>5</sup> A popular form of entertainment is music, and metaverse provides the opportunity to create and consume it by way of teaching music, hosting virtual dance parties, and conducting live concerts.<sup>6</sup> Live concerts help music artists reach a wider audience, showcase their music, and build a stronger fan base. The nature of the music industry makes it hard for artists to earn enough profits from just making and distributing music as record labels and publishing companies also get rights over the music and they receive a percent of royalties over the same. An artists' main source of income is through public live performances. The metaverse provides an opportunity to do so from the comfort of their own space. Hence, the platform helps artists on an artistic level as well as on a commercial level.<sup>7</sup>

Artists also have the option to sell tokenised versions of their merchandise and music to fans on the platform. This is done by way of the transfer of NFTs. The gap between the artist and their fans have reduced through this platform. There is minimal to no involvement of third parties like record labels, publishing companies, distributors, agents, and lawyers.<sup>8</sup> This provides more authority and control to the artists over what they choose to do on the platform and how they wish to execute it rather than having to depend on third parties before performing any activity in public.<sup>9</sup>

### **Status quo of copyrights on metaverse**

After considering all the possibilities for artists on the metaverse, it is important to question whether copyright status quo is maintainable on the platform.<sup>10</sup> The primary feature of the metaverse is to provide everyday real-life things on a digital domain. Hence, it has a virtual

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<sup>5</sup> Turchet, L. Musical Metaverse: vision, opportunities, and challenges. *Pers Ubiquit Comput* (2023). <https://doi.org/10.1007/s00779-023-01708-1>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

nature.<sup>11</sup> There is a duality to the world in the metaverse and this, the existence of real-world things in the virtual world, the replica of the real world in the metaverse, known as digital twins. There also exist digital natives that are created on the platform but can be connected to the physical world counterparts. And finally, the real and the virtual world co- exist in an interoperable manner.<sup>12</sup> Metaverse also provides additional collaborative facilities where users from across the world can collaborate with one another to create new things on the platform and possibly create a replica of it in the real world.<sup>13</sup>

With increase in the use of the users' data, including their private and crucial information, that has led to the datafication, it can become common among the newer generation of people to accept the fast-paced technological changes. And with the increase in social acceptance of new technologies like the metaverse there are privacy and cybersecurity concerns to be looked into. With respect to the maintainability of the copyright status of creations on the platform, it can be confusing. While the platform is extremely helpful to the artists, the users may have doubts regarding the copyright status of the artistic and musical works. Copyright protection was introduced to protect intangible property rights over tangible property creations with originality being the main eligibility criteria.<sup>14</sup> The physical representation of the idea is expressed through NFTs, and the current copyright laws will be applicable in the metaverse and for the protection of NFTs.<sup>15</sup>

The temporary and boundless nature of the metaverse also raises questions regarding the copyright protection of works created on the platform.<sup>16</sup> As the platform is an augmented reality and only users who consume certain material are aware of its existence, the general application of copyright law needs to be questioned. But it is understood that the mere existence of copyrightable material on the platform is enough to protect it under copyright law.<sup>17</sup> As copyright is a bundle of rights, which includes negative rights for the author of the original

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<sup>11</sup> Oladotun A, 'Top 10 Metaverse Platforms To Watch Out for in 2023' (BeinCrypto, 6 December 2022); <https://beincrypto.com/learn/top-metaverse-platforms/>

<sup>12</sup> Lee L, Braud T, Zhou P, Wang L, Xu D, Lin Z, Kumar A, Bermejo C, Hui P, All One Needs to Know about Metaverse: A Complete Survey on Technological Singularity, Virtual Ecosystem, and Research Agenda. Computers and Society (2021). <https://arxiv.org/abs/2110.05352>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ramos A, 'The metaverse, NFTs and IP rights: to regulate or not to regulate?' (WIPO, July 2022); [https://www.wipo.int/wipo\\_magazine/en/2022/02/article\\_0002.html](https://www.wipo.int/wipo_magazine/en/2022/02/article_0002.html)

<sup>16</sup> Ibid.

<sup>17</sup> With the additional requirements of originality, expression of the idea (a necessity in common law countries, but not in the European region).

work to stop others from copying the work without prior authorisation, the same will apply on the metaverse.<sup>18</sup> This is the case in the real world as well. Not every original creation made in the real world is known to every other artist. This leads to several cases of similarity between two different original creations. It is possible for the same to occur on the metaverse.

Even though that may be the case, it is the duty of the users of the platform to respect the rights of the rightsholders and withhold themselves from exploiting the work of art of another artist. It is prerogative for the platform to protect the rights of the authors of any form of creative work made on the platform. The Berne Convention for the Protection of Literary and Artistic Works, which is ratified by 181 countries, provides protection for literary and artistic works irrespective of the type of expression.<sup>19</sup> In addition to this, the WIPO Copyright Treaty adapted the Berne Convention to the digital environment.<sup>20</sup> The new laws state that any new creations, that are eligible to be protected under the law, that are stored in a digital form in an electronic file, like NFTs or any file, cannot be reproduced or exploited by another person without the prior authorisation of the original author.<sup>21</sup> Hence, creations made on metaverse will be protected under copyright laws and anyone looking to use a sound recording made on the platform will require the prior permission of the author to use, reproduce and exploit the original recording.

### **Scope of protection and NFTs**

Now that original works created on the metaverse will be protected under copyright law, additional questions arise. Once we have considered that an artist has in fact created an original piece of music or sound recording on the platform, what will the scope of protection of the musical work be? There is a possibility that the author of the music chooses to discontinue using the platform.<sup>22</sup> The music created by the author will continue to exist on the platform. In cases where there is a real-world reproduction and exploitation of the music created on the platform, it is important to provide a clear set of protections by way of licensing. Cross licensing agreements that permit sharing, reproduction, and the exploitation of music in an

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<sup>18</sup> Bhagat K, 'Bundle of Rights under Copyright Law' (IP Matter, 12 March 2021); <https://www.theipmatters.com/post/bundle-of-rights-under-copyright-law>

<sup>19</sup> Berne Convention for the Protection of Literary and Artistic Works, 1887.

<sup>20</sup> Ibid.

<sup>21</sup> Article 1(4) of the WIPO Copyright Treaty, 2002.

<sup>22</sup> Ibid.

interoperable manner would help solve the issue.

The problem can also be resolved by mandating users to accept certain terms and conditions (T&Cs) before being permitted to enter a meta space and participate in one. The T&Cs can be drafted by the hosts of the meta space themselves or with the help of legal counsel, the latter being preferred. This provides more authority to the host or the author of the work to protect their right against illegal reproduction and exploitation of their work. The T&Cs can include clauses ranging from online conduct and behaviour of the users and participants, data privacy, to the use of any copyrighted material by the participants in the meta space. This can be applied by the hosts of all meta spaces to protect their works. Cross licensing agreements can also be signed between the hosts of different meta spaces on the platform to permit better collaborative conditions for all users. In case of any violations, the accounts of the violators can be terminated. The same is followed in cases of video game modding in the online gaming industry.<sup>23</sup>

It is clear who the owner of a copyrightable material is once it is created (minted) and tokenised into an NFT on the platform. NFTs can also be created using physical items from the real world and converted into a digital format. Once an NFT is minted it can be sold on the platform when a programmable digital unit is ascribed to it.<sup>24</sup> Questions regarding ownership and copyrights are raised when the said NFT is transferred to another user. When transferring the NFT, is only the ownership transferred, or are the copyrights over the work transferred as well? How can this be made clear between the buyer and seller?

The same issues occur in the real world. One does not own the copyrights over a work of art when they buy a copy of it. The same applies to NFTs. When an NFT is transferred to another person, only the ownership over the artwork is transferred.<sup>25</sup> This restricts the subsequent buyers from exploiting the creative work for any monetary benefit. And in case they do so, the original creator has the right to claim infringement against the commercialisation of the NFT. Hence, it becomes necessary for the buyer and the seller to find clarity on the transfer of media

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<sup>23</sup> WIPO Advisory Committee on Enforcement Report, 'Copyright Infringement in the Video Game Industry' 15th Session, Geneva, 2022. [https://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_15/wipo\\_ace\\_15\\_4-executive\\_summary1.pdf](https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_15/wipo_ace_15_4-executive_summary1.pdf)

<sup>24</sup> Wang Q, Li R, Chen S, Non-Fungible Token (NFT): Overview, Evaluation, Opportunities and Challenges. Cryptography and Security (2021). <https://doi.org/10.48550/arXiv.2105.07447>

<sup>25</sup> Muley S, 'Do NFTs Give You Copyrights? A Lawyer Explains' (Quint, 22 January 2022); <https://www.thequint.com/tech-and-auto/tech-news/do-nfts-give-you-copyrights-a-lawyer-explains-dune-spice-dao#read-more>

and intellectual property rights over the NFT. And such clarity can only be found through a licensing agreement between the parties. The agreement must clearly lay down what rights are being transferred and if any media and intellectual property rights are being transferred. The agreement must also mention what the new owner of the property has the right to do with the NFT. Agreements on the platform can be formed by way of smart contracts. Smart contracts can help with security and transparency in the procedure of transfer of NFTs and digital assets. Smart contracts created on the platform will make it clearer to follow-up on the terms, conditions, and clauses of the agreement. The contracts will be available and open to access on the database of metaverse when necessary.<sup>26</sup>

### **Music licensing, collecting royalties, and platform liability**

Though smart contracts and other legal means can be used to reduce infringement of copyrighted material, they are not enough to regulate the working of an entire industry on a digital medium. Music played on the platform in different meta spaces will require licensing rights from the copyright owners. Additionally, the collection and distribution of royalties is also an important issue to be looked at.

Collecting societies are responsible for administering royalties within the domestic and international markets. The Indian Performing Right Society Limited (IPRS), Phonographic Performance Limited India (PPL),<sup>27</sup> The Indian Singers' Rights Association (ISRA), and NOVEX are the collecting societies for India. IPRS is responsible for collection and distribution of royalties for public performances and for uploading music on any licensed digital music services. ISRA is responsible for collecting royalties for singers enrolled under the scheme. Mechanical royalties are collected when a copy of a song is made or during the sale of each song. A mechanical license is necessary to play recorded music on any platform.<sup>28</sup> When artists perform on a commercially released music publicly, they are to receive royalties from PPL. Considering the current landscape of the collection and distribution of royalties, it

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<sup>26</sup> Ibid.

<sup>27</sup> Nandy Gupta P, 'Evolution and Functioning of Copyright Societies in India' (Chamber and Partners, 10 August 2023); <https://chambers.com/articles/evolution-and-functioning-of-copyright-societies-in-india>

Recorded Music Performance Limited (RMPL) is another entity that is dedicated to royalty collection and licensing of recorded music. While there is a general rule restricting the presence of several collecting societies for the same category of musical works, there is yet to be a decision made regarding the positions of PPL and RMPL.

<sup>28</sup> Ibid.

can be understood that there is no proper distribution mechanism for music played and performed on the metaverse.

Though the said societies license music and collect royalties on behalf of artists, there is no clear mention of how the same will work on metaverse. Moreover, due to the virtual nature of the platform, online live performances on the metaverse fall under the streaming as well as public performance categories.<sup>29</sup> Does this mean that artists are entitled to receive royalties for both categories from one performance? Will the performance be deemed to fall under any one category? Is there a need for a new administrative body that solely focuses on licensing music and collecting royalties from decentralised platforms? The new body can have the capacity to keep track of the metadata and manage royalties for performances, sound recordings, and sync music.<sup>30</sup> A new administrative body can also help bring structure to a decentralised platform.<sup>31</sup> As artists have a more direct relationship with their fans and audience on metaverse, this can also lead to fair prices being charged. This will help smaller and newer artists to get their share of royalties without interruption.<sup>32</sup>

It is also important to think about the liability of the platform when it comes to the illegal actions of the users, but this becomes unclear due to the way the platform functions. There are digital intermediaries within the metaverse, like OpenSea and Decentraland,<sup>33</sup> on the platform who can be held liable for the actions of the end users based on the applicable law.<sup>34</sup>

India's The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Guidelines) has provisions to protect the intermediaries from liability as long as they hold a neutral position and carrying out detailed due diligence procedures, when permitting the use of the platform, are not aware of any illegal content, and remove such illegal

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<sup>29</sup> Banerjee T, Johri I, 'Content, Intellectual Property & The Metaverse' (Mondaq, 25 July 2022); <https://www.mondaq.com/india/copyright/1214846/content-intellectual-property--the-metaverse>

<sup>30</sup> Cohen C, 'Welcome to the Metaverse: Solving Old-World Licensing in a Whole New Universe, (American Bar Association, 28 April 2023); [https://www.americanbar.org/groups/entertainment\\_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/2022-eli-writing-competition-runnerup-essay-welcome-the-metaverse/](https://www.americanbar.org/groups/entertainment_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/2022-eli-writing-competition-runnerup-essay-welcome-the-metaverse/)

<sup>31</sup> Ibid.

<sup>32</sup> Resnikoff P, 'The Top 1% of Artists Earn 77% of Recorded Music Income, Study Finds...' (Digital Music News, 5 March 2014); <https://www.digitalmusicnews.com/2014/03/05/toponepercent/>  
Blake E, 'Data Shows 90 Percent of Streams Go to the Top 1 Percent of Artists' (Rolling Stone, 9 September 2020); <https://www.rollingstone.com/pro/news/top-1-percent-streaming-1055005/>

<sup>33</sup> Guadamuz A, 'Court in Barcelona issues injunction against Mango's NFT use in the metaverse' (TechnoLlama, 25 November 2022); <https://www.technollama.co.uk/court-in-barcelona-issues-injunction-against-mangos-nft-use-in-the-metaverse>

<sup>34</sup> Ibid.

content once notified about the same.<sup>35</sup> Additionally, the responsibility placed on the intermediaries is majorly specific to the protection of national security and blocking content that are a threat to national security and public order.<sup>36</sup> While the Guidelines place responsibility on intermediaries to encourage content that is harmful to children, infringes any Intellectual Property Rights,<sup>37</sup> no provisions are specified for taking down content relating to music piracy cases, which has grown higher than the global average (30%) at 68% in India.<sup>38</sup> The new Guidelines also add responsibility on the publishers.<sup>39</sup>

The Indian Music Industry (IMI) Report proposed measures to curb piracy rates by suggesting the government to expand the applicability of Section 79 of the IT Act, 2000,<sup>40</sup> to platforms that promote and are actively involved in music consumption.<sup>41</sup> The report also suggested the government to focus on implementing mechanisms for swift takedown notices that mandate platforms to block illegal or infringing content and impose “repeat infringer” policies against repeat offenders.<sup>42</sup> Though legislation is lacking on this behalf, the jurisprudence of Section 79 in *Google LLC v DRS Logistics Limited & Ors*,<sup>43</sup> and *Puma Se v Indiamart Intermesh Ltd.*,<sup>44</sup> have proved to be hopeful. Here a Division Bench and a Single Judge Bench, respectively, of the Delhi High Court, held the intermediaries responsible for “enabling” the infringement of registered trademarks. An important point to note is that this content regulation was brought into place for centralised platforms. How these provisions will apply to the metaverse is yet to be known.

## Conclusion

Metaverse has become extremely popular in the current era and its use has increased exponentially. It has now become important to consider the rights of musicians. The IMI has

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<sup>35</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

<sup>36</sup> Ibid.

<sup>37</sup> Bagaria V, ‘Generative AI and Intermediary liability under the Information Technology Act’ (Bar and Bench, 13 July 2024); <https://www.barandbench.com/law-firms/view-point/generative-ai-and-intermediary-liability-under-the-information-technology-act>

<sup>38</sup> Jain M, ‘Music piracy in India stands at 68%, double the global average: Indian Music Industry Report’, (Medianama, 5 March 2022); <https://www.medianama.com/2022/03/223-imi-report-reveals-music-piracy-india-68-double-global-average-30-2/>

<sup>39</sup> Raghavan M, ‘India’s New Intermediary & Digital Media Rules: Expanding the Boundaries of Executive Power in Digital Regulation’, (Future of Privacy Forum, 10 June 2021); <https://fpf.org/blog/indias-new-intermediary-digital-media-rules-expanding-the-boundaries-of-executive-power-in-digital-regulation/>

<sup>40</sup> Information Technology Act, 2000.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> 2023 SCC OnLine Del 4809.

<sup>44</sup> CS(COMM) 607/2021.

urged the Telecom Regulatory Authority of India (TRAI) to hold metaverse operators accountable when IP rights of creators and users are infringed upon.<sup>45</sup> During the consultation on Digital Transformation through 5G Ecosystem, most stakeholders agreed that the current legal regime suffices in its applicability for legal issues in metaverse, and most have suggested to use a “wait and watch” approach in order to not stifle innovation.<sup>46</sup> Any new regulatory frameworks for metaverse could be addressed in the Digital India Act. However, it is pertinent to evaluate the and address any new legal issues that may arise in the future. To protect the rights of artists and musicians, it becomes necessary that the government address such policy loopholes by building standard internet and technical protocols on a centre and state level.

Metaverse has become the best alternative to reduce the gap between the artists, their rightful income, and the audience. Several issues that occur in the real world will possibly be replicated in the metaverse and current laws can help solve a few of them, but there remain questions to be answered by the law and newer issues will rise in the future. The current laws will not be sufficient to deal with the newer issues and there is a need for new legislation. For now, it is important to reduce infringement and help draft better licensing agreements. Metaverse might just be the place for artists to make it big.

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<sup>45</sup> Agarwal A, ‘Hold metaverse operators liable for IPR infringement: Music Industry to TRAI’, (Hindustan Times, 3 February 2023); <https://www.hindustantimes.com/india-news/hold-metaverse-operators-liable-for-ipr-infringement-music-industry-to-trai-101706948849542.html>

<sup>46</sup> Ibid.