



# Metaverse and the reconstruction of the current legal paradigms

Paola Morales and Daniel Legaspi of Santamarina + Steta examine the potential risks to personal data protection in the metaverse and how the agreement of consent can be accommodated in the changing landscape.

**T**he Metaverse is the digital revolution that is hastening the development of new technologies and bringing unique challenges to the legal industry, including the reconsideration and reconstruction of the current legal paradigms.

The metaverse has been in our thoughts for a long time; we can even find references to the metaverse back in the 1970s. But during the 1990s and especially in the 2000s, these virtual worlds became part of our lives.

In the early days, the interaction was merely focused on entertainment; hence, the legal aspects were not so relevant. The user only needed to accept the terms and conditions of these virtual worlds and behave accordingly. In the following years and up to 2021, the legal implications of the metaverse focused mainly on data privacy. However, since then, experts have identified other legal areas affected by the interaction between people in a metaverse and how the same can affect our lives within and in the external world.

Before elaborating on the legal paradigms, it's worth noting that according to Google Trends, in 2021, the word metaverse was highly sought. The search to define the metaverse was bound to happen. It is easy to understand why there are many different concepts but, for the moment, achieving "one metaverse" or "the metaverse" is



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complex. First, it requires a complete consensus of every player, which can be the most critical legal implication. Secondly, it is hard to believe this unanimity will ever happen mainly because businesses' interests and perspectives differ widely. Moreover, each company can have different notions and ideas of the metaverse. Hence, in the following years, we may start interacting with many metaverses depending on our needs and interests.

But one thing is certain, the fact that the word 'metaverse' became a trend last year resulted in many positive things. Users interacting in the metaverse seek better products: internet connection, bandwidth, latency, game engines, and hardware – supercomputers or accessories needed to enter the metaverse. Companies will now have to invest in developing more satisfactory products to fulfill users' needs, resulting in products requiring protection from an Intellectual Property standpoint. The benefits of these circumstances will indirectly impact other industries that will ease our lives and improve technological developments.

## Data Privacy implications

And what about privacy? The first milestone would be to reshape the legal paradigms surrounding the possible implications of a parallel universe where reality is "different" from what we know today. The first step is to revisit the whys, hows, and whats of regulations and data privacy considerations.

In the next few years, we will probably face two opposite blocks of thinking and action. On the one hand, there is a high probability of losing control of our privacy in the metaverse due to the technological developments that allow our personal data to be used and marketed without us even knowing (that is to say: unconsented).

On the other hand, companies, organizations, and even governments are aiming toward protective approaches as they have become aware of the dangers of losing privacy in this new reality.

A critical matter to be studied will be if people in the metaverse are allowed to be value-neutral versus value-laden. The most common thinking is that the key is in the technology's use, that there are no "perverse technologies" until they are used for the wrong purposes. Today, we face a reality where there are more value-laden technologies than neutral ones. Technology with a purpose remains at the core, no doubt. Regardless, as technology, its algorithms, and its uses in the metaverse evolve, technology will be less and less "human-managed". Therefore, the ethical purposes for deciding how to use it could be lost in the technology.

Algorithms, AI, and whatever comes next in shaping the metaverse are the future handlers of our personal data, which will prove to be dangerously challenging. There will be much more drastic trade-offs for us concerning our data. Currently, most regulations mandate consent from individuals to use their personal data. This rule may be the necessary starting point for exercising the right to say, "I do not consent to my image, avatar, or data being used in the metaverse". Also, current regulations follow the information principle where individuals have the right to know how their data will be used and for what purposes, as well as cancellation obligations when the personal data is no longer needed for the purposes it was collected.

These are all obligations that controllers must meet, and if they fail to do so, they will be held accountable for those infractions. Complications will come when issues occurring within the metaverse cannot be traced back to a particular controller to hold responsible for those violations. A possibility may be to consider the platform on which the metaverse takes place to be such controller. But even if so, it would also be a challenge if we realize that most of them specifically state in their terms and conditions that they are not responsible for any content that runs or happens through them.

As can be seen, the implications for data privacy are considerable, as the trade-offs would be high and would depend on others managing our personal data and privacy. For example, think of the avatars used in the metaverse. This version of people is powered by their image, interests, and behaviors. Therefore, the most intimate sphere of us as individuals could become exposed, and, as a result, it can affect us in ways that are not easy to foresee or evaluate.

On the other hand, what about anonymous avatars or the possibility of being somebody else in the metaverse? This scenario is the idea most appealing

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for people to jump into this new reality. People have an opportunity to reinvent themselves while still using parts of themselves as a foundation. Therefore, it is necessary to analyze and consider options to mitigate the loss or violations of our privacy in this anonymous environment. One solution could be that from the beginning of their product development, metaverse handlers populate the individual's data features using k-anonymity standards and de-identification techniques to "manage" those unwanted traits that may damage the acceptance of these new desired interactions.

## Reassessment of informed consent

We also must re-evaluate current notions of informed consent as living-conscious individuals. Currently, we can say yes or no to a company selling our personal data or choose to pay for a more private email. But what about our holograms or avatars in the metaverse, or those of our loved ones once we die? Or when our heirs have also died? Consent would have to remain the cornerstone around the "new privacy". The key question is whether this consent is ever lost, since to what extent does it belong to our heirs?

In addition, the commonly known proper drafted consents and releases of responsibility must be reconsidered and rebuilt to avoid adverse outcomes that we can only imagine because privacy issues as we know them today are on the verge of disappearing.

The stakeholders in the metaverse (individuals, companies creating products, policymakers, authorities) are becoming very relevant to varying stages of these privacy issues, and their interests are certainly very different. For example,

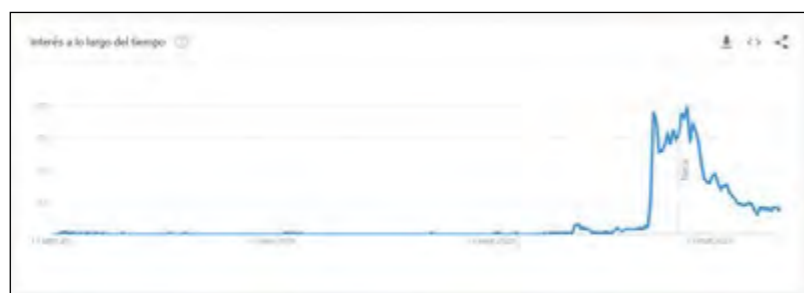
## Résumé

### Paola Morales, Counsel

With more than 22 years of professional experience, Paola's interest in innovative issues led her to specialize in telecommunications, media, and technology, as well as e-commerce and privacy and data protection. She advises multiple international and national companies and the government in the implementation, from a transactional and regulatory context, of their business in Mexico in these sectors.

### Daniel Legaspi, Partner

Daniel has over 15 years of professional experience in intellectual property, franchising, licensing, and technology matters. His practice focuses on assisting clients to maximize the profitability of their intangible assets by developing and carrying out custom-made strategies involving technology (NFTs, Blockchain) on a national and international level. Furthermore, Daniel is currently leading the Technology Taskforce of the firm focused on assisting businesses in the digital environment that have evolved or entered Web 3.0, IoT, IoB, and the Metaverse.





individuals' interests might be limiting their exposure in the face of companies focused on improving products or targeting and benefiting from personal data. And the interest of policymakers and authorities is most likely to balance these interactions appropriately.

This clash is occurring now and will continue to happen in the metaverse. In almost all cases, it will be related to the need for having or not having consent. It is difficult to assess the liabilities or trade-offs, as it is challenging to balance them at this stage in time. The currently known privacy protection techniques, like differential privacy or k-anonymity, will likely become obsolete with the future technologies in the metaverse. The real takeaway is that current notions of privacy are being changed by technology and will continue to transform over the next decade.

Lawyers and policymakers need to be prepared to deal with the issues that may arise and, better yet, attempt to deregulate or regularize – although further analysis is needed on what approach to take – consent issues currently being handled.

It could be that the benefits of the new form of privacy in the metaverse would likely outweigh the harms. However, the damage could also be

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massive due to the lack of remediation when the notion of “no consent” or “forever” treatment surfaces. Moreover, we cannot forget the ethics involved in this new way of processing personal data with a different notion of consent. What meta-ethical approach should we take to analyze this? At this point, it is not easy to decide.

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