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Due diligence on assets in the metaverse

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The Metaverse might seem, initially at least, like a parallel universe. In fact, it's better understood as an environment that goes beyond real life or, to put it another way, as a space that integrates the real world and the virtual world, and allows users in that space to interact. There are already various platforms that can be said to be part of the Metaverse, such as Fortnite and Roblox.

In any human relationship (even virtual ones), rights and obligations will exist, and there will be goods to trade and conflicts to resolve, just as in real life, since the Metaverse is an expanded reality. Such transactions are already taking place in the Metaverse: sales of virtual land, works of art, tickets to shows; museum visits; supply of services; and courses and events, just to give a few examples.

In this article, we will look at transactions involving intangible assets in the Metaverse, and the legal questions that buyers of such assets may have to deal with.

Intangible assets are those that have no physical existence but still have economic value. Goods that originate in the Metaverse necessarily have no physical existence and therefore are inherently intangible. For example, real estate in the Metaverse does not correspond to property in the physical world, and is therefore an intangible asset.

But how is the existence, originality and ownership of assets produced in the Metaverse proved, and what is transferred when they are bought and sold?

To answer these questions, we first have to understand NFTs (non-fungible tokens). NFTs are unique codes recorded in a sequential chain using blockchain technology that guarantee ownership of assets by converting any type of digital media into a unique item, or, in other words, a non-fungible asset. To put it very simply, NFTs are certificates of authenticity for intangible assets.

Thus, a technical due diligence of assets will be necessary to determine if NFTs are duly recorded in a blockchain, since blockchains are decentralized peer-to-peer networks, hosted in computer systems maintained by multiple entities.

Do NFTs mean that legal due diligence of Metaverse assets is unnecessary? We don't believe so. Below we've listed some of the legal aspects that must be assessed when digital assets are bought and sold:

- **What is the asset composed of?**
- **Who created the asset? Who holds the rights to the asset?**
- **What tool was used to develop it?**

- **Is there a document that sets out the rights and obligations of the purchaser of the asset? What are those rights and obligations?**
- **Are there limitations on the use of the asset? Can the purchaser freely dispose of the asset or is there some restriction? To give an example, is the buyer of virtual real estate free to grant third parties the use of all or part of the space? Are there rules and regulations that must be followed?**

All these questions can be examined in a due diligence investigation of the documentation associated with NFTs, in order to achieve greater legal security and allow the potential acquirer of digital assets to make a more informed decision on the purchase.

A legal due diligence will examine the terms of the platforms and smart contracts in order to determine the rules governing the use, licensing, disposal, and reproduction of the asset. When dealing with works of art, for example, an NFT does not necessarily give the holder full rights over the asset. For example, the moral right to be identified as the author remains with the creator, just like physical works of art. Furthermore, there can be royalties of varying amounts to be paid to the creator, depending on the provisions of the NFT documentation.

NFTs can also be generated for assets in the real world, such as vehicles and real estate, establishing, in a virtual environment, rights over physical assets.

When NFTs are composed of real world assets, a due diligence investigation is needed to verify the ownership or other rights that permit tokenization of the asset. Thus, if an NFT represents rights to receivables such as those deriving from a trademark licence, lease of a property or sale of merchandise, the due diligence should assess whether the contracts that provide for the receivables have been duly formalized, to mitigate the risk of acquiring a fraudulent NFT.

The issues raised here touch on current legal questions, which naturally do not contemplate the new reality of the Metaverse. Generally speaking, law follows social changes, and establishes rules to govern them after the fact. In all likelihood, therefore, specific legislation and regulations will have to be issued to deal with transactions and relations in the Metaverse.

>>> This article is part of the e-book "Metalaw: Reflections on Law in the Metaverse".
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