

# Civil liability in the metaverse

28.03.2022 5 min read

## Authors

**Gisela Sampaio da Cruz  
Guedes**

**Marcella Campinho Vaz**

## Related areas

**Dispute Resolution**

## Topics

**Dispute Resolution** **Metaverse**

The Italian jurist Bobbio would say that it is not true that "the Law always arrives late and is an obstacle to change."<sup>1</sup> The function of the law is not merely to maintain the established order but also to alter it, by bringing about social changes. In fact, the law can arrive early, and be an important element for social transformation, reweaving the existing social fabric in its role as a bringer of change. When social transformation results from technological advances, however, legislation is usually the best means of keeping up with new phenomena. In such circumstances, the law does indeed arrive late, after the new reality has already come into being. The law then must adapt to the new social context, and does not always manage to deal well with all the complexities of actual cases.

The internet is a case in point. The internet arrived in Brazil in 1981, by means of a copper wire in a submarine cable that connected the Fundação de Amparo à Pesquisa (the Research Support Foundation) of the State of São Paulo to Fermilab, a physics laboratory specializing in the study of atomic particles located in the state of Illinois, in the United States of America. In 1994, internet services were marketed by state-owned Embratel, on an experimental basis. In 1995, the internet had left the academic environment, and the Ministry of Communications decided that internet services would be commercially available in the country. The development of the internet is therefore a relatively recent phenomenon.

The Law arrived late to the internet in Brazil: only in 2014, or some two decades later, did Law 12.965, the "Internet Bill of Rights", come into force. A good part of the delay can be explained by the difficulty in foreseeing all the possible types of conflicts that can result from wrongful use of a new technology, and by the fact that legislation does not develop at the same speed as technological transformations. The internet is an enormous network for the exchange of information and for precisely that reason it is an environment of almost uncontrollable freedoms, which magnifies the harmful potential of certain conduct and imposes on the interpreter of the law the challenge of finding tools within the legal system to protect legally significant interests.

The Metaverse promises to revolutionize the internet, transforming it into an immersive experience. It's the future of the internet, according to Mark Zuckerberg. Users will act in the Metaverse through their avatars, interacting with other avatars as if they were living in a parallel reality where they will also be able to buy and sell houses, land, vehicles, replicas of art works, and clothing – among an infinite variety of other digital goods – and, of course, enter into contracts. In contract law, the challenges range from verifying the identity and capacity of contractual parties to problems with jurisdiction and applicable law; in civil liability, the challenges seem even greater, running from how the elements of civil liability will apply in the Metaverse, to problems in interpreting new types of harmful situations, and reparation for damage in the Metaverse.

One of the biggest challenges the Metaverse poses for civil liability is identifying the party that caused the damage. The virtual environment allows users to create avatars through which they interact with others. A user, protected by anonymity, could use an avatar to inflict damage that is difficult to repair, since the victim would not be able to identify who caused the injury, at least immediately. The problem becomes even more complex when one considers that a single user can have more than one avatar, and could, for example, use one of those avatars to engage in wrongful conduct, and even pretend to be another person.

Fault (or negligence in common law terms) is an essential element of civil liability, and here too there are challenges. A code of conduct for the Metaverse will be needed. Today's dynamic reality, with its increasingly rapid technological developments, has left the *bonus pater familias* far behind as a standard of behavior. Given the immense variety of activities that can be conducted in the Metaverse, standards of care will have to be developed for the types of conduct that evolve in the new social environment, to enable a precise and objective assessment of the parties' behavior in each specific case. Just as with the internet, the courts will play a fundamental role in constructing the standard of conduct that will apply in the Metaverse.

Last, turning to the question of reparation of damage, the Metaverse will present challenges to jurists because it is a space of great freedom and (at least initially) little control, where non-economic damage of all types can proliferate. If the internet already seems to give broad scope to moral injury, what can be expected of the Metaverse, where avatars can interact directly, without the need to respect the physical borders between countries and the differences between legal systems? Legal transactions of various types can be carried out in the Metaverse, with effects in the real world: an avatar could purchase a pair of digital sneakers, like those produced by Nike, with delivery in the Metaverse, or a pair of physical sneakers, for delivery at the user's residence in the real world. The legal theory of breach of contract will have to adapt to these parallel worlds, with consequences for civil liability. The same holds true for reparation of damage, which will have to straddle the virtual and real worlds.

When it comes to the Metaverse, real life has outrun the law, at least for now. Legislation will arrive late to the Metaverse, and in the meantime a great effort will be required of those who interpret and apply the law to apply existing sources of law to solve the innumerable disputes that will arise as this new "reality" develops. Still, while legislation may fall behind, the law does offer tools of interpretation that will be immensely useful in ensuring that a minimum of legal certainty is maintained during the early stages of adapting to the Metaverse.

#### **NOTES:**

<sup>1</sup> Norberto Bobbio, *Da estrutura à função: novos estudos de teoria do direito*, translated by Daniela Beccaccia Versiani, São Paulo: Manole, 2007, p. 94.

***Click here to access more articles.***

› PROFESSIONALS

## Professionals who combine legal insight and market perspective



**Gisela Sampaio da Cruz Guedes**



**Marcella Campinho Vaz**