

Building Respect for IP

Study: *The localization of IP infringements in the online environment: From Web 2.0 to Web 3.0 and the Metaverse*



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The Localization of IP Infringements in the Online Environment: From Web 2.0 to Web 3.0 and the Metaverse

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Why does it matter?

- Enforceability of the right at issue (territoriality)
- Applicable law
- Competent court(s)

Purpose of the study

- Causal event: where defendant initiated infringing conduct
- Accessibility: where infringing content may be accessed
- Targeting: where infringing conduct is targeted at

Can same criteria find application in Web 3.0 / metaverse contexts?

Does distinction between centralized and decentralized metaverses matter?

- Copyright, designs, trademarks
- Unregistered / registered IPRs
- Infringements committed outside of contractual relations
- International/comparative perspective

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From Web 2.0 to Web 3.0

- Legislative instruments clarifying that exclusive rights apply to new media
- The 'new' metaverses
 - Centralized / decentralized
 - Features
 - Interoperability across networked platforms
 - Immersive user experience
 - Real-time network access
 - Spanning of the physical and virtual worlds
- *New media*, not new places

Relevant framework for localization exercises

Unregistered IPRs: copyright

- International level: Lex loci protectionis (Berne Convention)
- EU experience: Rome II and Brussels I recast

Registered IPRs: trademarks

- Registration issues
- EU experience: EUTMR

Application in Web 2.0 situations

- Causal event: where defendant initiated infringing conduct
- Accessibility: where infringing content may be accessed
- Targeting: where infringing conduct is targeted at
 - Sufficient connecting factor
- Growing relevance of intermediaries and their role in enforcement initiatives
 - Safe harbours
 - Injunctions
 - Direct liability for user uploads

Applicability in Web 3.0 situations, including the metaverse

Unregistered IPRs	Registered IPRs	Centralized / decentralized
<p>A is an Italian national who resides in the UK and is the author of a photograph first published in the UK. A finds out that B, who resides in the USA, has shared a copy of A's work on the metaverse of company X, established in Japan, without A's authorization. The allegedly infringing copy may be viewed without particular territorial restrictions, including from the UK. What law shall govern the potential dispute between A and B and where could A take legal action against B?</p>	<p>Brazilian company A is the owner of a registered CDR and a registered EUTM. A finds out that company B, established in India, has made available for sale on the metaverse of company Z, established in Australia, virtual clothing that appears to infringe A's design right and also carries a sign identical to A's trademark. Where could A sue B and what law would govern the resulting dispute with B?</p>	<p>Would it make a difference if the metaverse on which the unlawful activities referred to in Examples 1 and 2 above have been committed was decentralized (instead of centralized) and/or the infringer could not be identified or located?</p>

IPR enforcement: broader considerations and conclusions

- Evidentiary issues
- Existing framework sufficiently adaptable
- Role of intermediaries
- Disparities in available remedies (de minimis harmonization)

“From a technical point of view, the internet is a worldwide means of communication: a user can access any website from anywhere on Earth or transmit a message to a recipient who is located anywhere else. However, things look different from a legal perspective [...]. Thus, there is a fundamental contradiction between the borderless and global nature of the internet on the one hand, and the territorially limited rights and obligations attached to various online activities on the other. There are two possible approaches to resolving this contradiction: we may attempt to “territorialise” the internet through geoblocking or to extend the territorial competence of the relevant authorities so that it covers more countries, thereby allowing those authorities to regulate online activities globally”

Maciej Szpunar, First Advocate General at the Court of Justice of the European Union



Thanks for your attention!

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