

The Metaverse: A Legal Primer for the Senior Living Industry [Podcast]

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The metaverse is widely regarded as the next frontier in digital commerce, with businesses across industries spending millions of dollars to position themselves as market leaders. While it offers clear opportunities for businesses, the metaverse also presents unique legal challenges. This alert highlights a few key legal issues all businesses should consider before making the leap.

What is the Metaverse?

At its core, the metaverse is the next generation of the Internet. Built largely on decentralized, blockchain technology instead of centralized servers, it consists of immersive, three-dimensional experiences with vibrant digital marketplaces, persistent and traceable digital assets, and a strong social component. As consumers flock to the metaverse platforms and tech companies create next-generation consumer electronics that will make the metaverse more accessible, the ways in which the metaverse can assist the senior living industry are already beginning to emerge.

The Business Case for the Senior Living Industry

The metaverse offers unique opportunities for the senior living industry. Consider the virtual tour used in marketing efforts, and reimagine it as a chance for facilities to offer prospective residents a chance to interact with facility amenities and personnel. From a basic level, the ability to market the metaverse as an amenity has value in itself. On a larger scale, it could lead to the development of a hybrid home health and senior living community offering, with the metaverse providing that community setting.

While the business opportunities are clear, the metaverse additionally offers the possibility of improving resident care. For example, the metaverse gives faraway family members the opportunity to connect with residents in a setting more engaging than a phone call or video chat – a critical alternative in light of the social isolation issues highlighted in the pandemic.

Before making a leap into a metaverse platform, businesses should consider these six legal issues:

1. **Take custody of digital assets.** Because of their digital character, digital assets such as cryptocurrency and non-fungible tokens (“NFTs”) are uniquely vulnerable to loss and theft. Before acquiring cryptocurrency or NFTs, businesses will need to set up a secure blockchain wallet and adopt appropriate access and security controls.
2. **Establish a dedicated legal entity.** Businesses may want to consider setting up a new subsidiary or affiliate to hold digital assets, shield other parts of their business from metaverse-related liability, and deal with the potential tax consequences.
3. **Select the right platform for you.** There are multiple metaverse platforms, and they all have tradeoffs. Some, such as Roblox, offer access to more consumers but generally give businesses less control over content within the programs. Others, such as Decentraland and the Sandbox, provide businesses with greater control but smaller audiences and higher barriers to entry. Businesses should consider who their target audience is and their long term metaverse strategy before committing to a particular platform.
4. **Register your IP.** Businesses should consider filing trademark applications covering core metaverse goods or services and securing any available blockchain domains, which can be used to facilitate metaverse payments and to direct users to blockchain content, such as websites and decentralized applications. Given the accelerating adoption of blockchain domains along with limited dispute resolution recourse available, we strongly encourage brands to consider securing intellectual property rights now.
5. **Protect and enforce your IP.** The decentralized nature of the metaverse poses a significant challenge to businesses and intellectual property owners. Before proceeding with blockchain-based transactions, including purchasing or minting NFTs, businesses need to understand that content recorded on a blockchain is there permanently and cannot be deleted. Restrictions on use and resale of an NFT must be carefully considered and implemented prior to minting because once the content is on the blockchain, there is little recourse.
6. **Reserve metaverse rights.** Businesses that license their IP, particularly those that do so on a geographic or territorial basis, should review existing license agreements to determine what rights, if any, their licensees have for metaverse-related uses. Moving forward, we encourage brand owners to expressly reserve your rights for metaverse-related uses and exercise caution before authorizing any third party to deploy your IP to the metaverse on your behalf.

Ready to Enter?

The metaverse poses a tremendous opportunity for businesses to connect directly with consumers in an interactive way that was considered science fiction just a few years ago. But like every new frontier, technological or otherwise, there are legal and regulatory hurdles to consider and overcome. Some are familiar, while others are novel.

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