

Music and the metaverse

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Topics

Intellectual Property Metaverse

If the arrival of streaming in the 2000s opened up several possibilities and, in Brazil, resulted in a new conception of *public performance*¹, it's more than likely that the Metaverse will also generate new legal controversies over music and copyrights.

Even before the new virtual reality becomes a reality in Brazil, Fortnite and similar videogames, which are considered precursors of the Metaverse, have demonstrated how music can be exploited in the Metaverse. Since 2019, Fortnite has been holding exclusive virtual shows by big names in music, such as Travis Scott, Lil Nas X and Ariana Grande. At the shows, user avatars can change position and move about freely while watching the performance. The events have been a success: each show attracted between 10 and 33 million spectators.

Musical experiences in the Metaverse are no longer exclusive to videogames, and big names in the music industry have been developing their own events. In 2021, for example, pop singer Justin Bieber held an interactive show on the Wave Metaverse platform. For 30 minutes, he performed songs from his latest album, Justice, through an avatar that replicated his characteristic looks and gestures.

As far as live concerts are concerned, performance of music in the Metaverse (or at least on Metaverse platforms) is already a reality. But since the Metaverse is a virtual universe, in which practically every action performed in the physical world can be replicated, it is inevitable that users will routinely buy, listen to, and share music in this new environment.

Collecting royalties and related payments for songs performed in the Metaverse, whether in real time presentations and other types of public performances, or in individual streamings, constitutes a major challenge for copyright collection societies around the world. It's hardly surprising that in the United States the controversy has advanced to the point where the National Music Publishers' Association (NMPA) has brought a USD 200 million lawsuit against Roblox, a famous Metaverse platform, for failure to pay royalties for music performed on the platform.

Clearly, interactions in the Metaverse have the potential to disrupt the way copyright and neighboring rights are currently governed. Yet another change is the gamification of the musical experience, which adds yet another layer to the already complex division of copyright and neighboring rights in music. The fact is that musical experiences in the Metaverse are only possible because of game developers' creative work and improvements, which inevitably leads to the question of what percentage game developers should be entitled to in the complex world of collection and distribution of rights in the music industry. And that's without considering potential musical creations by avatars in virtual environments, using tools made available for that purpose by developers of Metaverse platforms.

Although regulation of copyright in the context of the Metaverse is in the very earliest stages, it is essential to provide for these new technologies in assignment and licensing agreements, and to include a broadly-worded clause that will cover new technologies that will arise in the future – Brazil's Superior Court of Justice has held that such clauses are valid (appeal REsp 1.098.626/RJ).

The Metaverse, therefore, will clearly generate a great many legal questions related to copyright, involving issues such as the division of royalties, the classification of public performance in the Metaverse, jurisdiction, and many more that naturally will arise in the future. Even so, experience gained in the "real world" is the best starting point for designing regulations to govern rights over music in the Metaverse.

NOTES:

¹ In appeal Resp 1.559.264/RJ, Brazil's Superior Court of Justice, the Superior Tribunal de Justiça (STJ), held, on February 15, 2017, that streaming a musical work in a digital environment is also a type of public performance and is subject to payment of royalties to ECAD, the Brazilian counterpart of the NMPA.

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

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