

How Real Estate Cos. Can Protect Their IP In The Metaverse

By **George Pavlik** (May 24, 2024)

Augmented reality. Virtual reality. The metaverse.

These ideas once sounded straight out of sci-fi and were believed unlikely to have legal or business implications for the commercial real estate industry, but with the advancement in capabilities and potential applications of digital technologies, there are now emerging intersections between intellectual property and real estate concerns that you probably want to have a handle on if you design, own or manage commercial property.



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By way of background, VR and AR are both technologies designed to create immersive experiences for their users but have different methods for doing so.

VR is a fully digital environment that simulates a real-world three-dimensional environment. Using VR headsets, users can be fully subsumed in a computer-generated world with which they can interact using gestures or controllers.

You've probably seen "fail" videos of users with VR headsets smashing into actual furniture. In other words, you're not in a different world, but it sure seems that way.

AR has been described by the technology research and consulting firm Gartner as "the real-time use of information in the form of text, graphics, audio and other virtual enhancements integrated with real-world objects." So instead of immersing players in a virtual world, AR augments their real world with an overlay that players can perceive with their senses, the most common of these being visual.

There are many uses of AR we see every day that don't require a headset; the "strike-zone" in the batter's box during a baseball telecast or the virtual first down line in a football broadcast.

On social media, AR filters overlay virtual elements on users' faces, allowing them to take augmented selfies or share creative content on smartphones. Surgeons can also use AR to envision the exact positioning of an implant or incision.

As for the metaverse, the term actually did originate in science fiction, and is generally credited to author Neal Stephenson and his 1992 sci-fi novel "Snow Crash."

In today's world, the metaverse refers to a virtual shared space that is created by the collision of physical and virtual reality. It goes beyond VR or AR by envisioning a persistent, interconnected, and immersive digital universe where users can interact with each other and digital content in real time.

In recent years, the metaverse — or in tech terms, spacial computing — has gained traction in various industries, including technology, gaming, and social media, as more and more companies dial up ways to create immersive and interconnected digital experiences. And intellectual property plays a major role.

Projections for the metaverse economy, according to a December 2023 report from

Research and Markets, estimate it will be worth \$400 billion by 2030.

What that means from a consumer perspective is that the computer screen we use today may potentially become an oft-used portal to a 3D virtual realm that mimics real life. Or the virtual glasses that we may one day wear as part our daily uniform will show AR overlays of advertisements or user reviews on actual brick-and-mortar buildings, including restaurants or retail establishments.

And if current trends are any indication, the use of IP in the virtual world will follow reality, with certain brands and trademarks making their way into these virtual environments.

Companies like Meta Platforms Inc., Nike Inc., Microsoft Corp. and Gucci have already explored opportunities for virtual brand promotion in the metaverse, bringing their trademarked brands along for the ride. Non-fungible tokens have found a niche on virtual platforms giving companies and artists the ability to tokenize and auction off digital works.

Virtual goods, apparel and accessories are frequently sold or licensed in the metaverse, and often carry IP rights. Media companies and entertainment franchises have also made their home in the metaverse in the form of virtual concerts with real-world celebrities, showcasing the integration of entertainment IP.

And obviously gaming, which in many ways was, and is, the beta-testing arena for virtual worlds, gives users an ever-more realistic, yet virtual, interactive experience.

One of the more interesting — and unexpected — areas affected by the use of IP in the metaverse is perhaps the commercial real estate sector, both from the standpoint of the creation of virtual real estate and buildings in VR platforms, to the digital display of virtual signage on real world property using AR technologies.

On the VR front, platforms like Decentraland and Cryptovoxels for example allow users to purchase virtual property using blockchain technology. A user may buy a 16-meter by 16-meter plot of digital land from Decentraland, which offers thousands of such plots. Sotheby's, for example, bought land there and created a digital auction house to sell virtual goods and real estate.

Given its brief timespan, the rise in pricing for digital land has been impressive as well.

The first-known parcel sold in 2017 for just \$20. Four years later, an owner of a plot of metaverse real estate was asking \$6,000, and in early 2022, the average price reached \$15,000. That same year someone paid \$450,000 to own a virtual property adjacent to Snoop Dogg on a platform called Sandbox.

As VR platforms have grown, so too has the onset of virtual real estate, with developers such as SuperWorld now creating virtual replicas of landmark buildings and properties that provide opportunities for users to purchase recognizable structures. These replicas are commonly referred to as virtual or digital twins.

More particularly, at least one developer using advanced 3D computer graphics technology has successfully created complete virtual clones of entire cities that can be used in VR platforms.

For owners of any landmark, real-world counterparts of these digital twins, the prospect of not having ownership or control over the digital replica is troubling to say the least,

especially where the value of the property — and corresponding income stream — in the digital world can derive at least in part from the originality and distinctiveness of the architecture, reputational image or cache associated with the original real-world building.

On the AR side, property owners have growing concerns that AR technologies will enable the unauthorized display of virtual signage onto physical surfaces of their brick-and-mortar buildings. And their concerns are warranted, as potential conflicts are readily foreseeable.

Beyond the probable lack of awareness and not receiving just compensation from the display of such virtual signage, the third-party AR could also result in violations of obligations to a tenant or corporate sponsor, which may be entirely unbeknownst to the building or property owner in real time.

Virtual advertisements could promote goods or services in competition with those of the building owner, a tenant or a corporate sponsor, or even divert potential customers to competing establishments.

Imagine, for example, digital advertisements for American Airlines being prominently displayed via AR technology on the exterior of the United Center in Chicago, obscuring the visibility of actual physical signage for United Airlines.

Or if users of AR glasses could see expansive virtual advertisements for the customer relationship management software company Zoho Corp. displayed on the exterior facade of the Salesforce Tower in San Francisco. The virtual display of a digital advertisement for a nearby Starbucks coffee shop on a building housing a Dunkin' Donuts could also be troublesome.

As a tenant, Dunkin' may very well have contractual rights as part of its lease agreement that prohibit the building owner or manager from permitting the display of advertisements or signage for specific competitors such as Starbucks.

As is typically the case, technology and its corresponding impacts have outpaced the enactment of laws for addressing these new technological challenges. As such, there is unfortunately no magic bullet or once-size-fits-all solution.

Notwithstanding, the following are some recommendations that may help real estate companies best position themselves in relation to IP issues in the metaverse.

Conduct a diligence investigation to develop an understanding of current obligations and opportunities.

This can include reviewing leases or other relevant contracts to understand the scope of landlord-tenant rights with respect to particular buildings and also tenant or corporate sponsors.

Where a company has a significant real estate portfolio, it can also be useful to audit the portfolio to identify properties that may be known or recognized by their unique design or name.

Where a particular building has distinctive architecture, a review of the agreement with the architect or design firm should be undertaken to identify whether copyrights to the architectural design were validly assigned to the company.

Develop a business plan for commercializing real estate assets in the metaverse.

Such a plan could include opportunities for direct commercialization by establishing a property owner's presence on AR and VR platforms by owning, controlling, or managing virtual properties.

Licensing of IP rights to third parties for use in the metaverse and generation of royalty income should also be considered. In this regard, the policing of IP rights can have particular importance.

Policing can include reasonable and regular monitoring of certain metaverse platforms for unauthorized use of digital content and providing written notification to infringing parties — and the AR and VR platforms themselves — to report the unauthorized display or use of valuable IP.

If useful, metaverse policing and monetization agents can be engaged to help implement such a plan.

Take steps to protect corresponding IP rights.

File applications to register trademarks that are material to the company that cover virtual services and goods that are aligned with the business plan.

Such applications can cover names and logos including images of distinctive buildings that may be prone to being digitally reproduced by other parties.

Advancing such applications to registrations will eventually require actual use of the applied-for marks in connection with such virtual goods or services either directly or via a licensee, but the initial applications can be filed on an intent-to-use basis to provide time to implement such use.

Creating digital images — static, dynamic or 3D — of buildings and minting NFTs for such images can also be useful to establish an NFT presence as the official source of your IP and content. Registration of digital images with the U.S. Copyright Office can also be useful.

Evaluate opportunities for advocacy and strategic engagements.

Since there is not yet a developed body of law or administrative rules addressing the above note challenges, engaging with industry associations and lobbies in the real estate sector may bring about petitions to lawmakers for legislation to better protect property owners in the metaverse — e.g., regulations requiring AR platforms to include opt-in provisions for properties, and ordinances to prevent unauthorized virtual intrusion and trespass.

In addition, direct engagement with AR platforms could result in either agreements for the display of approved and controlled virtual content placement or contractual restrictions on displayed content on or in properties owned or controlled by your company.

Conclusion

In the end, with virtual platforms expanding by the day, it's good to take a proactive approach and conduct some basic diligence to understand the inherent IP risks and opportunities relative to IP rights in the metaverse.

As with the real world, planning and implementing your strategy for protecting valuable IP rights can be paramount to guarding your rights and corresponding revenue opportunities, and to mitigate risks of third-party claims.

Hopefully, legislation, regulation and legal precedent will evolve and quickly catch up to address the emerging sea of IP issues that seem to be on the horizon with the proliferation of metaverse technologies, but until then, a strategic plan that includes consideration of IP interests can best help to mitigate risks and allow property owners to boldly go where no party has gone before.

Just remember, it's not sci-fi, but may the force be with you in any case.

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