



## RAPE IN THE METAVERSE: THE LEGAL IMPLICATION AND THE WAY FORWARD.

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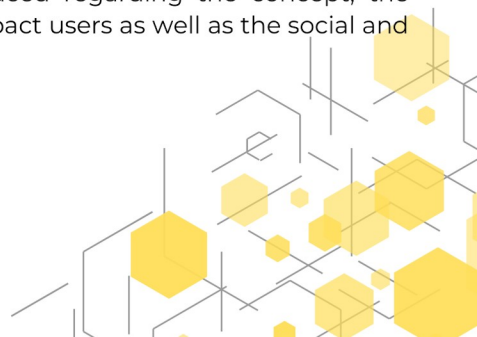
### INTRODUCTION

It is no news that humanity has always thought of ways to make life simpler and less complex. These thoughts and desires have propelled man into a series of inventions aimed at achieving simplicity and luxury. We can see this from the invention of aeroplanes by the Wright Brothers, to Charles Babbage who invented the computer to Alexander Graham Bell who is credited with inventing the telephone. All such inventions have opened the possibility for man to invent as much as the mind can conceive; this has led to the invention of Artificial Intelligence (AI), Advanced Robotics and now, the Metaverse.

Unlike AI and advanced robotics, the concept of 'Metaverse' is yet to fully gain global acceptance, albeit top and prominent companies around the world (mostly in the advanced countries) have not only keyed into it but taken steps to bring it full fruition and acceptability, a typical example being the Facebook (now Meta Platform) and Microsoft. The acceptance of the Metaverse by prominent companies has seen a good economic trajectory from 2021 till date. The metaverse saw a \$120 billion revenue in 2022 and is expected to bring in about \$5 trillion United States dollars on or before 2030.

The concept of the Metaverse is not without its disadvantages. One of its possible disadvantages is the unknown possibilities that lurk around the metaverse with no regulation in place to curb its occurrence. Recently, the news headlines were flooded with the report of the British Police investigating the first case of 'rape in the Metaverse' - where a girl under the age of 16 was said to have been left distraught after her Avatar (digital character) was attacked and gang raped by online strangers (other Avatars) in a virtual reality video game.

This article will therefore briefly consider the concept of the Metaverse, the rights available in the metaverse and the possibility of a breach - using the 'virtual rape' instance as a case study. This article will also attempt to discuss the legal implications, if any, and the possible ways that can be adopted to forestall future occurrences. Furthermore, this article will briefly highlight the jurisdictional challenges currently being faced regarding the concept, the concerns on the data privacy of users, its psychological impact users as well as the social and cultural considerations about the concept.



## METaverse: WHAT DOES IT MEAN?

The word 'metaverse' is a loosely defined term referring to three-dimensional (3-D) virtual worlds in which users represented by avatars interact. And, as an emerging 3-D-enabled digital space, it uses virtual reality, augmented reality, and other advanced internet technology to allow people to have life-like personal and business experiences online. It is a space where digital representations of people (known as Avatars) interact at work, play, carry on meetings in their office and other life activities.

According to futurist Cathy Hackl, the metaverse is not about escaping reality but "embracing and augmenting it with virtual content and experiences that can make things more fulfilling and make us feel more connected to our loved ones, more productive at work, and happier." Brian Solis, Salesforce's global innovation evangelist, "What the metaverse is all about is community. The value of belonging to this community. The role you can play as a user in this community so that you feel like a stakeholder and not a 'user'.

Light of Brian Solis' definition above, shows that the metaverse seeks to create a semi-physical community, virtually, that enables characters to act as they would in reality. This would mean that, while characters can perform daily legal activities, some characters would also be able to perpetrate illegal activities, as we have it in reality.

## RAPE IN THE METaverse: THE RIGHTS OF A DIGITAL CHARACTER AND THE LEGAL IMPLICATIONS.

Asides from being an offence, rape is an act which leaves the victim both emotionally and psychologically scarred and, in most cases, the victim never tends to recover from such an awful experience.

Being a crime and therefore an offence against the State (country), coupled with the need to not only protect its people but bring perpetrators to book whilst preventing the commission of same, countries all over the world have enacted laws to combat the menace and these laws are laced with stiff punishment for offenders.

The disturbing news that emanated from the British Police earlier in the year that they were investigating the first case of 'rape in the Metaverse' is one that took Metaverse enthusiasts and the world by surprise. Though the Police have decided not to release all the necessary details (having regard to the age and identity of the child), the child is however said to have experienced psychological trauma similar to that of someone who has been **physically raped**.

This disturbing news (though would not be the first time users have complained of their avatars being sexually molested) has necessitated the legal consideration of the issue at hand and the sustainability of virtual rape.

## DOES A DIGITAL CHARACTER SHARE THE SAME PERSONAL RIGHTS AS A NATURAL PERSON?

To fully appreciate this subject, it is imperative to determine the meaning of the word 'right' as it relates to persons (personal rights), more specifically, as it relates to this paper. The term 'Personal rights' as defined in the Black's Law Dictionary is the right of personal security, comprising the right to life, limb, body, health, reputation, dignity, and the right of personal liberty.

As defined above, it therefore follows that personal rights are directly linked to a natural person and not inanimate things. According to the Black's Law Dictionary, 'persons' are of two types; natural (human beings) and artificial (companies). However, where the term 'person' is used in a statute, it would ordinarily connote a natural person, except where expressly stated to include companies. It is therefore necessary to state that there is currently no legislation that includes a Digital Character in its definition of a person.



Furthermore, using the Nigerian Constitution and statutes as a reference, there is no attribution of rights to entities other than humans and companies. A person is an entity that has been assigned rights and obligations by law. Digital Characters are yet to be assigned rights and obligations as far as we know. Hence, it is a dilemma as to how there can be a breach of right when there is no existing right.

Where the law guarantees a right, it also creates a remedy in the event of a breach hence, the Latin maxim ***'ubi jus ibi remedium'*** that where there is a right, there must surely be a remedy.

Flowing from the above, can a digital character be said to enjoy any form of right? If yes, where do the rights emanate from? If not, can a digital character be said to breach the law or a person's right?

### **CAN A DIGITAL CHARACTER BE A VICTIM OF RAPE?**

Being that a digital character is a mere representation of a natural person in a virtual world makes the question less simple. Before now, discussions in this line would never have been envisioned, albeit, evolution is now synonymous with mankind hence, so many possibilities.

In a bid to answer this question, it is important to define the nature of the offence, rape. In Britain where the victim of the purported rape incident resides, sexual offences are captured in the Sexual Offences Act, 2023 (hereinafter referred to as the Act). Section 1 of the Act provides:

- (1) A person (A) commits an offence if—
  - (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
  - (b) B does not consent to the penetration, and
  - (c) A does not reasonably believe that B consents.

In line with the above provision, a person can only be said to commit the offence of rape if such a person intentionally penetrates the vagina, anus or mouth of another person without the other person's consent. The key word here is 'a person'. Until we can determine if a Digital Character is a person properly so called, then the idea of a crime, a breach, or a right as it relates to a Digital Character is only theoretical or at best jurisprudential but not yet legal or practical.

Assuming but not conceding that a Digital Character has such rights that can be assaulted or breached in a 'virtual world', can the above provision and law apply? Is the British police charging the offender under Britain laws or Metaverse laws? If under the former, then it is left for determination whether the offence occurred in Britain or the Metaverse. If under the latter, it is pertinent to ask whether there is any law regulating the activities of the metaverse.

### **CAN A PERSON BE HELD LIABLE FOR AN OFFENCE COMMITTED BY HIS/HER DIGITAL CHARACTER (AVATAR) IN A VIRTUAL WORLD?**

Offence in the strictest sense is only to the extent that a law defines it. For instance, Section 36 (12) of the Constitution of the Federal Republic of Nigeria states that a person cannot be prosecuted for an offence that is not defined by any statute. Hence, can there be an offence where a law is yet to define it? Where there is no law, there cannot be a legal wrong; only moral wrongs or rights.

It is therefore pertinent to state that until there is legislation to link a Digital Character to its user (a natural person) it may be impossible for a person to be vicariously liable for the actions of a Digital Character.

In consideration of offences such as cyber-bullying or cyber-stalking, they are carried out by a natural person and targeted at another natural person through the use of the internet or other electronic devices, however, an offence committed by a digital character in a virtual world cannot be traced or linked to a natural person.

A digital character (avatar) on the other hand is but an image which represents an individual in an online game or chat room, etc and which can be easily moved around the screen. Though these avatars represent natural persons and are controlled by them, actions attributed to these avatars cannot be linked to natural persons and as such, the natural person in control of the avatar cannot be said to have committed an offence.

#### **ATTRIBUTING RIGHTS TO A DIGITAL CHARACTER: LEGAL AND ETHICAL IMPLICATION**

Attributing rights to a digital character would mean to also clothe such a character with rights, duties and obligations as is applicable to a natural person or artificial entity recognized by the law. This then raises the question if it is ethically and legally right to do so and what are the possible implications of such.

Legally it can be argued that owing to the pace at which the concept of the metaverse is gaining acceptance and usage, it has therefore become imperative that digital characters be accorded rights just as natural persons are in order to give the metaverse a more wholesome and exciting experience. Clothing these characters with rights will also in turn impose on them (and by extension the natural persons they represent) duties and obligations (to the extent to which it is so permitted by law would be enacted laws).

On the reverse, it can be argued that same as inanimate things cannot be said to have feelings or rights, it would therefore be out of place (ethically) to clothe a non-existent person which is but a mere representation in a non-existent world with the same attributes of a natural person.

It is therefore left to be seen whether law will embrace the ever evolving technological advancements and enact legislations to this effect or the laws of ethics would be made to take its own course.

#### **JURISDICTIONAL CHALLENGES: ARE THE EXISTING NATIONAL LAWS ADEQUATE?**

The concerns currently being raised regarding the jurisdictional challenges associated with the metaverse is not out of place, especially due to the pace at which the concept is not only growing but gaining wide attention. Are there any laws or regulations currently in place to cater for issues that occur in the metaverse? If so, which jurisdiction does it apply to bearing in mind that different companies (for instance; Sandbox, Decentraland, Facebook, Microsoft, Roblox etc) have developed their respective metaverse platforms thereby expanding the scope of the concept and that users of the platform are spread all over the world.

Currently there seems to be no domestic law regulating metaversal activities and this adds to the growing concern of not only the current users but potential users and stakeholders as well. Questions must therefore not only be asked but solutions proffered in order to come up with the right and an all encompassing regulation which will regulate its activities.

#### **CONCERNS ON THE PRIVACY AND DATA PROTECTION OF USER**

As the concept of the metaverse is gaining popularity and acceptance, so too have concerns on privacy and data protection of users equally been raised by enthusiasts and users. The development of metaverse platforms therefore raises many unanswered questions ranging from; the responsibility for data processing, lost or stolen data and consent for data processing.

Using Nigeria as a case study, the Nigeria Data Protection Act, 2023 provides that the Act shall apply to the processing of 'personal data' be it by automated means or not. Section 2 of the Act provides that the Act shall apply where the data controller or processor (be it domiciled, resident or operating in Nigeria or not) is processing the personal data of a data subject in Nigeria or personal data that occurs within Nigeria.



The Act goes further to define 'personal data' as any information relating to an individual who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of that individual. It therefore follows that the Nigeria Data Protection Act seeks the protection and regulation on the processing of personal information (personal data) and does not extend to digital characters.

Though the issue of privacy and data protection in the metaverse will be exhaustively dealt with in subsequent publications, it however begs the question of which law or regulation will apply where there is a breach of same in the metaverse and if same will only apply to the avatars or the natural persons to whom the avatars represent.

## **PSYCHOLOGICAL IMPACT ON USERS**

Being a virtual world in which persons will be immersed raises the concern of the psychological impact not acts done in the metaverse can impact on persons in the physical world. Is it possible for one to be psychologically or emotionally affected having regard to the fact that acts carried out in the metaverse are done not against natural persons but digital characters? In the latest wave of sexual assault of an avatar which drew the attention of the Police, the 'victim' who is a child is said to have experienced psychological trauma.

Wherein it is slightly possible for adults to develop a tough skin against any form of assault committed against their avatars, same might not be the case where the person involved is a child as ugly experiences tend to leave a more lasting scar in the mind of a child as compared to an adult.

The dual identity that one will possess is also an angle from which concerns have been raised on its psychological impact on users and potential users as the issue of dual identity (one in the physical/natural state and the other in the virtual state) can lead to confusion and conflict as individuals struggle to reconcile their virtual and physical selves. Mention must also be made that the way we think about and form relationships will be greatly impacted as our relationships may become more superficial and less meaningful thereby leading to feelings of loneliness and social isolation, even as we appear to be more connected virtually.

It is therefore interesting to see the level at which developers and the authorities will go to put mechanisms in place to save-guard the psychological state of users of the platform or at most, reducing its adverse effect to the minimum.

## **SOCIAL AND CULTURAL CONSIDERATIONS**

Though this topic will be exhaustively dealt with in subsequent publications, however the concept of metaverse which has gained wide acceptance in advanced countries, it is yet to gain popularity in developing countries of the world. Though the entire concept of the metaverse is to introduce a whole new level of making life easy for mankind, it is however worthy to see the reception the concept receives in these developing countries.

As interesting, exciting and captivating as the concepts sounds, it is however left to be seen the extent to which persons of diverse cultures and traditions (mostly third world countries) which are more pressed with the basic amenities of life and are yet to undergo the required digital transformation needed for the effective coming into play of the concept will accept it.



## WHAT IS THE WAY FORWARD?

These recurring issues have raised several concerns not only for the developers and metaverse enthusiasts alike but the governments of the day as well. There have been numerous reports of avatars being sexually assaulted in the metaverse. Some areas in which urgent attention is required regarding the pressing issues currently being faced by users of the metaverse will therefore be briefly examined.

## INTERNATIONAL/NATIONAL LEGISLATION

The metaverse is a ground-breaking development and has the potential to reshape how we work, learn and socialize in a virtual world, however, a whole lot still needs to be done to regulate its activities as the current trend shows that reality has outpaced the law.

It is therefore pertinent that as man is advancing technologically, the law must also evolve to meet up with these advancements. Legislators worldwide must therefore ensure that the appropriate regulations and laws are enacted to cater for the issues bordering on the metaverse as well.

Where jurisdictional issues relating to the location of the avatar to determine the appropriate forum to resolve potential disputes become unclear, it may be the case that an international law of metaverse could be developed to deal with these issues.

A leaf could be gleaned from the General Data Protection of the European Union as it relates to data protection and privacy.

## LINKED INDIVIDUAL AND AVATAR PERSONALITY

For a crime to be successfully proven, the mens rea (guilty mind or intention) and the actus rea (guilty act) must be established. Therefore where the mens rea of an offence committed in the metaverse is successfully established, then it becomes possible to hold the natural person whom the digital character represents liable as he/she would have intended the crime committed in the virtual world.

The reason for this recommendation is not far-fetched as certain acts of crime aside from making the victim distraught, leave them (and in most cases) in a permanent state of emotional and psychological trauma.

To protect the psychological and emotional state of users of the metaverse, it is therefore suggested that when necessary legislations and regulations are put in place to regulate actions of avatars in the metaverse, such regulations should incorporate ways in which an avatar can be directly linked and traced to its natural person to whom it represents through identifiers like national identification numbers, credit card details etc. In line with such regulations, the person the avatar represents can be traced and where the law so permits, held liable.

A leaf could be gleaned from the corporate world doctrine of lifting the veil wherein a director or shareholder of a company can be held liable for any illegality committed in the name of the company.

## ONE PERSON – AVATAR REGULATION

It is recommended that individuals should only be entitled to a single avatar in the metaverse. The reason for this is not far-fetched as it would prevent the idea of a person using an avatar to commit an offence and proceeding to deactivate the avatar or create a new one thereby rendering the possibility of being traced impracticable.



## METAVERSAL COURTS

As un-fascinating as it might sound, with the inclusion and incorporation of AI into the metaverse, virtual reality courts can be created to handle cases of breach of regulations by erring avatars with punishments ranging from compensatory reliefs to the avatar victim, imprisonment of the convicted avatar, suspension from the metaverse or deactivation.

## ARTIFICIAL PERSONALITY

Another way to regulate the actions of avatars would be the introduction of a distinct personality for the avatars so that avatars can have a separate and distinct personality from the persons they represent in the metaverse. With the introduction of artificial personality, avatars can easily be held strictly liable for actions committed by them.

## IMPROVED AVATAR PROTECTION BARRIERS AND OTHER ADVANCED SECURITY MEASURES.

Though developers have incorporated protective barriers aimed at protecting avatars from other avatars. With recurring sexual incidents such as this, such protective barriers should be improved upon to help curb future occurrences. Though this will be extensively treated in subsequent publications, it is recommended that besides the protective barriers put in place by developers to reduce the rate at which avatars are assaulted, avatars can be created in such a way that it becomes impossible for the to receive a command to commit a crime against another avatar. Where this however looks impracticable, the incorporation of the AI into the metaverse could help developers to come up with virtual law agencies (just as we have in the physical world) aimed at detecting and preventing the commission of crime.

## AGE LIMIT AND CONSENT

Another important way to curb incessant activities of the Metaverse vis a vis digital games is to ensure that certain age limits are set for which consent is sought to engage in the digital world. In essence, avatars can be protected as it will suggest that any avatar engaging in such digital games has consented to the set conditions of the digital games, for which avatars will not be liable if it turns out that other digital games users have input a piece of false information.

## CONCLUSION

It is without an iota of doubt that as man evolves, so too will technology thereby birthing not just new and unfathomable possibilities but concerns as to the legal aspect of it as well.

It therefore becomes imperative that as the world is slowly embracing the idea of Metaverse, our laws must also evolve to accommodate these technological advancements. Countries the world over (especially advanced countries) are therefore encouraged to enact legislation to cater for metaverse-related issues as their activities are currently outside the purview of any existing law or regulation.

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