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Digital Regulations in the Metaverse Era

COLOMBIA

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Data

Ana María Castro *Lloreda Camacho & Co, Bogotá*

Q 1. Are there any data (personal and non-personal) policies, strategies or regulations applicable to the metaverse in your jurisdiction?

There are no specific regulations applicable to the use of data or personal data in the metaverse.

Nevertheless, there is a general regulation applicable to the handling of personal data that would apply to the handling of personal data in the metaverse. There is also a specific regulation on matters relating to financial data (Law No 1581 of 2012, Law No 1266 of 2008 and the related regulatory decrees).

The handling of data which does not refer to individuals is not subject to the data privacy regulation, as established by Article 4(e) of Law No 1266 of 2008. However, the processing of any type of data must comply with the principles of Law No 1581 of 2012.

Q 2. How is the various personal and non-personal data associated with the metaverse protected in your jurisdiction?

As mentioned, the processing of personal data is protected by the general data protection regulation. Note that, in the case of personal data, the metaverse must have a mechanism for users to authorise the processing of their data, otherwise such processing will be invalid. Non-personal data is not directly protected. However, its processing must respect the personal data processing principles.

There is no specific regulation on the data of devices or inferred data, among others.

Q 3. Who are the different stakeholders involved in the data value chains in the metaverse and, in the case of personal data, what are their data protection roles? How are their activities regulated under regional/national policies, strategies or regulations?

The stakeholders involved in the metaverse and their roles in the data value chains are as follows:

- the data controller decides on the purpose of the data processing;
- the data processor carries out the processing on behalf of the data controller; and
- the data subject is the person whose data are processed.

Data controllers and processors must obtain the data subjects' consent for the processing and must comply with the duties applicable to data controllers or processors.

In Colombia, consent is the general rule for authorising data processing. However, there are certain exceptions, such as the public nature of data, information required by a court order, medical cases, information processing authorised by law for historical, statistical or scientific purposes, or data related to the Civil Registry of Persons.

Q 4. In relation to personal data, what are the data protection principles (eg, transparency) applicable to the metaverse? What are the most common types of infringement of data protection principles in the metaverse (eg, data minimisation) in your jurisdiction?

As mentioned, there is no specific regulation applicable to the metaverse. Consequently, the applicable principles in regard to the handling of data in the metaverse are those established in general regulation in Colombia. Note that the regulatory principles are applicable to the metaverse, as long as the interaction within the metaverse involves the processing of personal data.

These principles can generally be described as: freedom, purpose limitation, security, restricted access/circulation, transparency, confidentiality, data minimisation, integrity, incorporation, storage limitation, proportionality, reasonableness and accountability.

To date there have been no specific infringements relating to the metaverse. In general terms, infringements generally relate to the principles of data minimisation, accountability, freedom and authorisation.

Sanctions for breaching the personal data privacy regulation vary from fines of up to 2,000 times the minimum wage (approx US\$657,500), the suspension of processing activities and the closure of operations relating to the handling of sensitive data. There are also criminal sanctions, which include up to eight years' imprisonment.

There have been several cases relating to the infringement of the privacy regulation and its principles. A relevant sanction involving the infringement of data principles was established by Resolution 62132/2020, in which the SIC imposed administrative orders requiring Byte Dance Ltd (TikTok) to update its privacy policies and adopt mechanisms to protect minors' data.

Q 5. In relation to non-personal data, how is data sharing/licensing regulated in your jurisdiction? Is data ownership recognised? How is proprietary information, including any rights to datasets, regulated in your jurisdiction? What are the most common types of infringement of these rules in the metaverse (eg, unlawful use of proprietary information) in your jurisdiction?

There are no specific regulations regarding the ownership, sharing or licensing of non-personal data.

However, from a data protection point of view, non-personal information can be an asset of an organisation and may be protected as a trade secret or as confidential information.

If the information holds inherent value due to its secrecy, note that in accordance with Article 260 of Decision 486 from the Andean Community the improper use of trade secrets constitutes an unfair trading practice. Violations of trade secrets are also protected through criminal law, with penalties of up until 90 months imprisonment as established by Articles 308 and 258 of the Colombian Criminal Code (Law No 599 of 2000).

Q 6. Are there any policies, strategies or regulations applicable to digital marketing in the metaverse in your jurisdiction?

Although there are no specific regulations relating to digital marketing in the metaverse from the data protection perspective, it is worth noting that the general regulation on consumer protection and privacy rules will apply. See the chapter on digital marketing and consumer protection, where digital marketing regulation is explained from the consumer's point of view.

From the privacy perspective, it is worth noting that the SIC has recommended the implementation of appropriate and effective accountability strategies to comply with the data protection legislation. It also recommends that all marketing campaigns respect and follow the privacy policy of the companies towards which the marketing is aimed.

These recommendations are established in the *Guide on Personal Data Processing for Marketing and Advertising Purposes*, issued by the SIC.

7. Are there any policies, strategies or regulations in your jurisdiction focused on ensuring the protection of minors' data? What is the age of consent for data protection purposes? Is it necessary to verify the consent provided by a responsible adult?

The personal data of minors is specially protected. The processing of such personal data is prohibited, except when the processing is of public nature data, in accordance with Article 7 of Statutory Law No 1581 of 2012, or when the processing is in the best interests of the minor, respecting their fundamental rights and there is specific authorisation from the minor's representative.

In general terms, the Colombian regulation on privacy always requires consent for the handling of personal data for all types of data subject, including minors. Consequently, there is no specific age of consent. In the case of the data of minors, it is necessary that consent is given by the legal representative of the minor, which in the case of Colombia is both parents, and it is advisable to inform the minor about the handling of their personal data.

Regarding a specific age of consent, the above considers that Article 7 of the Statutory Law refers to minors as 'children and adolescents', defining them as individuals under the age of 18. As established by ruling C-748/2011, by the Constitutional Court, this protection applies to any individual under 18 years of age. However, the ruling determined a difference between subjects: children are understood to be individuals between 0 and 12 years old, whereas adolescents are individuals between 12 and 18 years old.

8. How are international data transfers regulated in your jurisdiction? Is there any case law or are there any decisions by a regulator regarding infringements of these rules in your jurisdiction?

Colombia's data privacy regulation distinguishes between international data transfers and transmissions: transfers occur when a data controller or processor sends data to a data controller, whereas data transmissions occur when a data controller sends data to a data processor.

For data transfers, consent of the data subject is required if the country to which the transfer is performed does not have an adequate level of protection. It is noteworthy that international data transfers can also be made in other cases without the consent of the subject or an adequacy decision in specific cases established in Article 26 of Law No 1581 of 2012.

Ascertaining whether a foreign country provides an adequate level of data protection is established in accordance with the standards set by Colombia's data protection authority, the SIC. If a data transfer is made to a country that does not have an adequate level of protection and none of the other exceptions provided in Article 26 of Statutory Law No 1581 of 2012 apply, the data subject's consent is required in order to perform the transfer.

If the transfer is to be made to a country that does not have an adequate level of protection and none of the exceptions apply, the SIC may issue an adequacy decision in which the authority may allow the transfer after a risk assessment has been carried out. Countries that have an adequate level of protection, according to the SIC, are listed in Chapter 3 (3.2) of Title V of the Legal Circular.

Data transmissions do not require the consent of the subject if there is a transmission agreement between the data controller and the data processor. However, from the perspective of the accountability principle, it is always advisable to obtain specific consent for the transmission of personal data, especially if it is an international transmission, as established by Article 25 of Regulatory Decree 1377/2013.

Q 9. How is automated decision-making regulated in your jurisdiction? Is there any case law or are there any decisions by a regulator regarding infringements of the rules applicable to automated decision-making in your jurisdiction?

There are no regulations regarding automated decision-making in Colombia. Even if carried out by automated means, the processing must respect legal binding principles, such as concerning data security and restricted access.

Q 10. What rights are granted to individuals for protecting their rights on the metaverse and how can they exercise them? What is the level of enforcement based on private claims in your jurisdiction?

There are no specific rights for individuals using the metaverse. In general terms the rights established in the general data protection regulation will be applicable. Therefore, data subjects have the right to request access, rectification, the suppression of or update to their data, to request proof of consent, to be informed of the purpose of the processing, as well as to file a complaint with the SIC. The enforcement of private claims and rights is on the condition of the regulatory authority's consideration, but only in cases when the data controller does not answer the claim or there are violations of the personal data protection and privacy regime.

Q 11. Are there any upcoming policies, strategies or regulations that will impact the use of data on the metaverse?

There are two bills that could affect the use of data on the metaverse, namely Bill No 156/2023C, which will introduce substantial changes to the data protection legislation, and Bill No 200/2023C, which seeks to establish specific rules for the use and regulation of AI.

However, as both bills are still being discussed in the Congress of the Republic of Colombia, they may be subject to substantial changes or they may not be approved.

1. Are there any cybersecurity policies, strategies or regulations applicable to the metaverse in your jurisdiction?

There are no specific regulations on cybersecurity measures applicable to the metaverse. However, some cybersecurity regulations might apply to virtual spaces, such as:

- the Colombian Criminal Code, namely
 - abusive access to a computer system (Article 269A);
 - unlawful tampering with a computer system or telecoms network (Article 269B);
 - the interception of computer data (Article 269C);
 - damage to a computer (Article 269D);
 - use of malicious software (Article 269E);
 - illicit access to personal data (Article 269F);
 - impersonation of websites to capture personal data (Article 269G);
 - theft through the use of a computer or similar means (Article 269I); and
 - the non-consensual transfer of assets (Article 269J);
- the Code of Criminal Procedure, namely the recovery of information generated while surfing the internet or other technological means that produce equivalent effects (Article 236), the action of undercover agents (Article 242, 242B);
- Law No 1928 of 2018 concerning the adoption of the Convention on Cybercrime of 23 November 2001;
- the Policy Guidelines for Cybersecurity and Cyberdefence, namely CONPES 3701, 2011;
- the National Digital Security Policy, namely CONPES 3854, 2016;
- the National Trust and Digital Security Policy, namely CONPES 3995, 2020; and
- the Methodological Guide on Computer Crime Attention (September 2023).

2. What are the secure by design principles applicable to the metaverse in your jurisdiction?

Colombia does not have any security-by-design principles applicable to the metaverse.

Q 3. Have there been any cyber incidents in the metaverse in your jurisdiction? How do the applicable policies, strategies or regulations react to cyber incidents?

Colombia does not have any registered cyber incidents in the metaverse. If cyber incidents involve personal data, reporting the incident to the SIC is necessary within 15 working days of the incident occurring.

The SIC may impose administrative sanctions and the courts can enforce criminal sanctions if computer crimes have been committed.

Q 4. Are there any cybersecurity standards in your jurisdiction specifically applicable to the metaverse? What are the main obligations they set out?

N/a.

Q 5. Are there any upcoming policies, strategies or regulations that will impact cybersecurity in the metaverse?

The upcoming regulations are as follows:

- Bill No 023/2023C will create the National Agency for Digital Security and Space Affairs and will set some specific competencies to implement protocols, standards and general instructions relating to digital security within public and private organisations;
- Bill No 101/22, which will modify the Criminal Procedure Code, creating a chapter on the 'violation of personal privacy through the use of information and communication technologies' and specifying the crime of digital gender violence; and
- Bill No 241/22, which will establish measures for the prevention, protection and punishment of sexual harassment, digital sexual harassment and other forms of sexual violence within the field of education and the workplace.



Digital identity and authentication

Ana María Castro, Lloreda Camacho & Co, Bogotá

Q 1. Are there any digital identity and authentication policies, strategies or regulations applicable to the metaverse in your jurisdiction?

Colombia does not have a specific digital identity programme applicable to the metaverse. However, the country's national digital ID scheme allows citizens to securely identify themselves in order to access digital services (Decree No 620, 2020).

Q 2. What are the different types of digital identity in the metaverse: what are the different tiers and types of ID and what are the different levels of protection in your jurisdiction?

N/a.

Q 3. How is self-determination exercised and protected in the metaverse in your jurisdiction?

N/a.

Q 4. How is the role of intermediary ID providers regulated in your jurisdiction? What are some of their main obligations?

N/a.

Q 5. Are there any upcoming policies, strategies or regulations that will impact the digital identity and authentication process on the metaverse?

No.

AI in the metaverse

Juan Nicolás Laverde, Brigard Urrutia, Bogotá and Juan Manuel Pacheco, Brigard Urrutia, Bogotá

1. Are there any AI policies, strategies or regulations applicable to AI or the use of AI on the metaverse in your jurisdiction?

There are currently no specific laws in Colombia applicable to the metaverse or AI. There are however, several policies and strategies that have been enacted by the government to promote the implementation of AI by public entities, households and entities. These policies and strategies do not specifically address the metaverse, but by fostering digital transformation they are applicable to the metaverse.

Some of the relevant policies and strategies in Colombia include:

- the National Digital Strategy 2023–2026;¹
- the roadmap to ensure the ethical and sustainable adoption of AI in Colombia;²
- the National Policy for Digital Transformation and AI;³ and
- the Ethical Framework for AI in Colombia.⁴

2. How is transparency and accountability related to AI ensured in your jurisdiction?

There are no specific laws applicable to transparency and accountability of AI in Colombia. However, the policies and strategies mentioned in the response to Question 1 address the principle of transparency and accountability of AI.

According to the Colombian government, transparency implies an openness to provide meaningful and understandable information about an AI system's functionality.⁵ Information should be easily accessible, encouraging the active participation of citizens in the design, implementation and evaluation of AI.⁶

With regard to accountability, the Colombian government has indicated that each actor in the algorithmic chain (ie, from the designers to the implementers) may be liable in case of harm to individuals, unless the wrongdoing of a specific actor is demonstrated.⁷ There can either be contractual, extra-contractual or criminal liability, but to date we are not aware of any case law or decisions by Colombian regulators in this regard.

There are no specific sanctions under Colombian laws and regulations for transparency and accountability infringements in regard to an AI system. If the output of an AI system infringes privacy or intellectual property laws, or generates a breach of contract, a lack of transparency and accountability principles may be used as evidence to determine the liability of an actor in the algorithmic chain.

1 Ministerio de Tecnologías de la Información y Comunicaciones (MinTIC), *Estrategia Nacional Digital 2023–2026* (2023).

2 Ministerio de Ciencias, Tecnología e Innovación (MinCIT), *Hoja de Ruta para el Desarrollo y Aplicación de la Inteligencia Artificial en Colombia* (2024).

3 Consejo Nacional de Política Económica y Social (CONPES), *Política Nacional para la Transformación Digital e Inteligencia Artificial* (2019).

4 MinCIT, *Marco Ético para la Inteligencia Artificial en Colombia* (2021).

5 *Ibid.*

6 MinCIT, *Hoja de Ruta para el Desarrollo y Aplicación de la Inteligencia Artificial en Colombia* (2024).

7 MinCIT, *Marco Ético para la Inteligencia Artificial en Colombia* (2021).



3. How is algorithmic bias mitigated in your jurisdiction? Are there any policies, strategies or regulations aimed at promoting fairness and non-discrimination?

Algorithmic bias is not specifically regulated in Colombia. The government, however, has indicated that ethical AI must implement the principle of non-discrimination, which requires AI systems to not produce results or responses that threaten the welfare or wellbeing of a specific group of people.

To mitigate algorithmic bias, privacy and data protection laws are nevertheless applicable. Personal data, according to the Colombian general data protection framework, outlined in Law No 1581 of 2012 and Decree No 1074 of 2015 (CGDP), is understood as any information that may be associated or connected to a given individual, in such a way to provide for their identification. As a general rule, prior, specific and informed consent from the data subject is necessary to process their personal data.

The CGDP defines sensitive data as data that is of an intimate nature in regard to an individual, where misuse could lead to discrimination. It provides a non-exhaustive list of examples of sensitive data, including health and medical information, racial or ethnic background, disabilities, sexual preferences and gender identity. As a general rule, the processing of sensitive data is prohibited unless there is prior, specific and informed consent from the data subject for a legitimate purpose. Sensitive data is subject to an enhanced level of protection, demanding more stringent security measures.

AI systems must comply with the CGDP in every process of the algorithmic chain, including the output. Unless prior, specific and informed consent is obtained, an AI system cannot make a decision on the basis of personal data. We are not aware of any case law or decisions by Colombian regulators with regard to algorithmic bias.



4. What is the intellectual property law treatment of AI-generated content used in the metaverse in your jurisdiction? Who are the rightsholders of that content?

Applicable intellectual property (IP) regulations in Colombia are enacted by the Andean Community (CAN), whose member countries include Colombia, Bolivia, Ecuador and Peru, although certain aspects are regulated through local legislation. Even though regulations issued by the CAN are communal and prevail over member countries' local legislation, each member country has an independent agency and registration system. Consequently, although a single IP system is in place for CAN member countries, a single registration system for such rights that provides for protection in all countries does not exist. Applications must, therefore, be filed in each of the CAN member countries to ensure adequate protection of IP rights.

In Colombia, Law No 23 of 1982, Law No 44 of 1993 and Decision No 351 of 1993 of the CAN comprise the legal framework for copyright. Copyright protection is granted to creations in literary and artistic fields. The protection is granted in regard to the form in which the ideas of the author are described, explained, illustrated or incorporated in the respective works, rather than the ideas themselves. The registration of protected works has a declarative effect, in the sense that no rights arise thereof, as it solely provides publicity, eases enforceability concerning third parties and represents evidence of ownership, originality and the creation date.

Colombia has a protection system based on the *droit d'auteur* regime, which stems from the civil law tradition, in contrast to the copyright framework that exists in common law countries. Although copyright protection is afforded regardless of the work's artistic merit or purpose, a work will be deemed to be worthy of copyright protection as long as it comprises originality and is understood as comprising the author's uniqueness and personality.

Based on the above, Colombia's National Directorate of Copyright (CNDC) established that the output of generative AI systems are not copyright protected works.⁸ Originality as an essential condition for the protection of works is based on the individuality of the work, which the CNDC defines as the stamp or personal mark that the author imprints on their creation and that makes it unique from other works. Based on the understanding that only a natural person can be an author, AI outputs do not contain the individuality of their author.

8 Dirección Nacional de Derecho de Autor, Resolution No. 185 of 2023 (2023).

Content which has been generated exclusively by AI tools would therefore not be a copyrighted work and there would not be any rightsholders for such content. It can be stated that the amount of human intervention in the content generated by AI tools may determine whether a work is copyrightable or not. We are not aware, however, of any case law or decisions by Colombian regulators with regards to AI-generated content in the metaverse.

Q 5. Which stakeholders are liable for any damages caused to third parties due to the use of AI in the metaverse? What sanctions (civil, criminal, administrative) may apply in case of infringement?

Please see the response to Question 2 on the transparency and accountability of AI in Colombia.

Q 6. Are there any upcoming policies, strategies or regulations that will impact AI in your jurisdiction?

A bill was recently brought before Congress which is quite ambitious in terms of its scope and range, somewhat along the lines of the EU's GDPR with some influence from the EU's AI Act. The bill has to undergo a lengthy process before Congress, where the outcome is uncertain. The draft bill, if it were to advance, would undergo substantial changes.

The government has also indicated that the National Council for Economic and Social Policy (El Consejo Nacional de Política Económica y Social or CONPES) is crafting a document on AI, based on the roadmap to ensure the ethical and sustainable adoption of AI in Colombia. A CONPES document guides government agencies on the development of relevant policies and strategies for economic and social growth.⁹

9 MinCIT, 'Colombia ya cuenta con una Hoja de Ruta en Inteligencia Artificial', (2024).



Human rights, accessibility and digital ethics

Ana María Castro *Lloreda Camacho & Co, Bogotá*

Q 1. Are there any human rights, accessibility or digital ethics strategies, policies or regulations applicable to the metaverse in your jurisdiction?

There are no specific policies or regulations applicable to the metaverse. However, there is an ethical framework for artificial intelligence and a roadmap to ensure the ethical and sustainable adoption of AI in Colombia.

Q 2. Considering the various health risks associated with the metaverse and related technologies, are there any strategies, policies or regulation in your jurisdiction aimed at protecting public health?

There are no specific policies or regulations to protect the public against health risks associated with the metaverse.

Q 3. Considering the various discrimination risks associated with the metaverse and related technologies, are there any strategies, policies or regulations in your jurisdiction aimed at ensuring non-discrimination?

There are no specific policies or regulations applicable to the metaverse. However, the ethical framework for AI in Colombia establishes a process for non-discrimination.

Q 4. Considering the risks to the freedom of expression and censorship associated with the metaverse, are there any strategies, policies or regulations in your jurisdiction aimed at mitigating them/promoting freedom of expression and non-censorship?

No.

Q 5. Considering the risks of misinformation and the risks associated with fake news and deep fakes on the metaverse, are there any strategies, policies or regulations in your jurisdiction aiming to mitigate them/promote freedom of expression and non-censorship?

No.



Q 6. Are there any strategies, policies or regulations in your jurisdiction aiming to ensure accessibility and inclusion in the metaverse? How are they enforced?

No.

Q 7. Are there any policies, strategies or regulations in your jurisdiction focused on ensuring the protection of minors on the metaverse?

There are no specific regulations for the protection of minors in the metaverse. However, the Code for Children and Adolescents (Law No 1098 of 2006) is applicable.

Q 8. Are there any policies, strategies or regulations in your jurisdiction focused on ethics-by-design on the metaverse? How are these rules enforced?

No.

Q 9. Are there any upcoming policies, strategies or regulations that will impact human rights, accessibility or digital ethics requirements in your jurisdiction?

The relevant proposed/upcoming regulations are:

- Bill No 023/2023C, which will create the National Agency for Digital Security and Space Affairs;
- Bill No 101/22, which will modify the Code of Criminal Procedure, creating a chapter on the 'violation of personal privacy through the use of information and communication technologies' and specifying the crime of digital gender violence; and
- Bill No 241/22, which will establish measures for the prevention, protection and punishment of sexual harassment, digital sexual harassment and other forms of sexual violence within the workplace and education.

Competition law

Ana María Castro, Lloreda Camacho & Co, Bogotá

1. Are there any competition strategies, policies or regulations applicable to the metaverse in your jurisdiction?

There are no specific regulations on competition in respect of the metaverse in Colombia. However, general antitrust laws and regulations apply to the metaverse.

The general prohibition, pursuant to Article 1 of Law No 155 of 1959 and Article 7 of Law No 2569 of 1999, establishes that any kind of practice intended to limit free competition is prohibited. This prohibition would apply to the metaverse.

Considering that there are no specific rules that apply to the metaverse, the responses to the remaining questions in this chapter will refer to general competition and antitrust legislation. Please note that the rules on anti-competitive practices are applicable to the metaverse, in certain circumstances.

2. Are there any strategies, policies, regulations or best practices on how to carry out an anti-trust and competition risk assessment?

There are no specific policies on competition risk assessments in Colombia. However, the SIC has promoted the implementation of antitrust compliance programmes. These programmes are formed by a set of rules, principles and procedures, which should be adopted by organisations to prevent risks inherent to its economic activities and for the prevention of anti-competitive practices.

There are no penalties for not implementing a compliance programme. However, the adoption of a compliance programme helps to foster a compliance culture and may prove useful in the instance that a company submits to a leniency programme.

A relevant case in this regard involves the sanctions imposed on the Colombian Football Federation relating to online ticket sales. The federation was sanctioned by Resolution 35072/2020 for its participation in a cartel to inflate ticket prices for national team matches with two ticket providers. The case resulted in the issuance of a monetary penalty equivalent to approximately US\$4,571,800.

3. What are the rules regarding market dominance and barriers to entry applicable to the metaverse in your jurisdiction?

There are no specific provisions relating to competition in the metaverse. Generally, market dominance is not prohibited, however abusive practices related to market dominance are considered anti-competitive conduct.

Sanctions on companies are administrative in nature and involve fines of up to 100,000 times the minimum monthly wage in the country (approximately US\$32.85m) or 150 per cent of the profits generated from the conduct, whichever is greater. The sanctions available are established by Articles 25 and 26 of Law No 1340 of 2009. Individuals may also be personally fined up to the equivalent of 2,000 times the minimum monthly wage (approximately US\$575,000).

Q 4. Are there any specific obligations for gatekeepers applicable to the metaverse in your jurisdiction?

There are currently no obligations placed on gatekeepers in the context of the metaverse in Colombia. This is understood as obligations similar to those established in the European Union's Digital Markets Act.

Q 5. Are there any competition strategies, policies or regulations in your jurisdiction applicable to the metaverse that aim to promote standardisation and access to fair and non-discriminatory licences?

There are no policies, strategies or regulations promoting standardisation and access to fair and non-discriminatory licences in Colombia. However, compulsory licensing is required for public interest reasons.

Q 6. Are there any competition strategies, policies or regulations in your jurisdiction applicable to the metaverse that aim to promote interoperability in the metaverse?

The promotion of interoperability is not regulated. However, an aspect of interoperability could be covered within the general rules on the prevention of the abuse of a dominant position in relation to the exclusion of competitors.

The sanctions are the same as those mentioned in the response to Question 3.

An illustrative case in this regard is the regulation of electronic invoicing by the government, which aims to allow interoperability between the different technical solutions available in the market.

Q 7. Are there any upcoming policies, strategies or regulations impacting competition in your jurisdiction?

There are no upcoming policies affecting competition in Colombia.



Intellectual property

Ana María Castro, Lloreda Camacho & Co, Bogotá

Q 1. What are the public policies, strategies or regulations relating to intellectual property which are applicable to the metaverse in your jurisdiction?

No specific regulations have been implemented or developed for the metaverse from an IP perspective. Therefore, the general industrial property and copyright regulations should be considered applicable to the metaverse. These are, among others, Decision 486 of 2000 and Decision 351 of 1993, of the Andean Community, as well as the Single Circular issued by the SIC.

Q 2. How are intellectual property rights to 'virtual objects', 'buildings' and 'avatars', etc, protected in your jurisdiction?

The protection of virtual objects, in terms of their design, image, colours and figures, is mainly achieved through the registration of trademarks, industrial designs and copyright.

Q 3. How are digital replicas of physical objects protected in your jurisdiction?

In Colombia, the protection of digital replicas of physical objects depends on the original object's nature and the context of the replica. In certain circumstances, digital replicas could be protected by copyright, trademarks and industrial designs.

Q 4. How is user-generated content and other derivative works protected in your jurisdiction?

User-generated content (UGC) and derivative works are protected through copyright protection in Colombia.

The rules and rights in this regard are usually set out and agreed upon through the terms and conditions between the platform and the users.

Q 5. Are there any collective rights management organisations active in your jurisdiction that also manage intellectual property rights in the metaverse?

Not currently.

6. How are intellectual property rights protected and enforced on the metaverse in your jurisdiction?

General industrial property, copyright, competition, criminal and civil law regulations are used to protect IP rights in Colombia. However, to date, no rulings have been issued regarding IP rights infringements in the metaverse.

7. Are there any intellectual property strategies, policies or regulations in your jurisdiction applicable to the metaverse that aim to promote interoperability in the metaverse?

There are no specific IP strategies, policies or regulations in Colombia directly targeting interoperability in the metaverse. However, some existing regulations might be relevant, such as:

- competition law;
- copyright limitations; and
- institutional coordination agreements.

There is no specific case law or any regulatory decisions addressing metaverse-related IP infringements.

8. Are there any competition strategies, policies or regulations in your jurisdiction applicable to the metaverse that aim to promote standardisation and access to fair and non-discriminatory licences?

From a competition law point of view, there are no specific policies, strategies or regulations promoting standardisation and access to fair and non-discriminatory licences in Colombia. However, compulsory licensing is allowed for public interest reasons, one example being the abuse of dominance by a patent holder.

9. Are there any other intellectual property issues related to the metaverse addressed in your jurisdiction?

Colombian law has not yet regulated IP matters involving the metaverse. There are currently no rulings on the enforcement of IP rights in the metaverse.

10. What are the roles of metaverse providers?

The roles of metaverse providers have not been defined yet in Colombia.



Q 11. How does your jurisdiction moderate content and how does it balance this with freedom of expression?

The Constitution of Colombia guarantees the freedom of expression, but it also recognises limitations based on respect for others' rights, public order and national security. Platforms are responsible for moderating content to prevent harm and illegal activities, but this must be balanced with the freedom of speech. Each case has to be analysed separately and according to the particular circumstances.

Q 12. Are there any by-design notice mechanisms?

No by-design notice mechanisms have been established by national legislation. However, any form of privacy authorisation or notice is valid if it fulfils the requirements of the privacy legislation.

Please note that in Colombia, the requirement to adopt mechanisms such as a notice and action mechanism (as established by Article 16 of the EU Digital Services Act), which allows users to notify the service provider about illegal content on their platform, has not been implemented by local legislation.

Q 13. Are there any upcoming policies, strategies or regulations relating to intellectual property in your jurisdiction?

Currently, no. However, the importance of updating the regulations to meet new digital challenges is constantly being discussed.

Digital transactions and ownership

Ana María Castro, Lloreda Camacho & Co, Bogotá

1. Are there any relevant policies, strategies or regulations applicable to tokens, non-fungible tokens (NFTs) or digital assets on the metaverse in your jurisdiction?

There are no specific laws or regulations in Colombia that apply to tokens, NFTs or digital assets in the metaverse. However, by means of external letters to the public that are not legally binding, the Colombian Tax Authority, the Colombian Central Bank, the Technical Council of Public Accounting, the Superintendency of Finance and the Superintendency of Companies have issued multiple opinions on the nature of digital assets in Colombia, among others. The most relevant documents are:

- External Letter No 100202208-1621, issued by the Colombian Tax Authority on 17 October 2023, in which the tax authority consolidated its opinions on tax matters relating to crypto-assets;
- Technical Orientation Document No 20, issued by the Colombian Technical Council of Public Accounting on 5 June 2023, in which the council explains the accounting principles that will be considered for the registry of these type of assets;
- the technical document issued by the Colombian Central Bank;¹⁰
- External Letter No 220-24741, issued by the Superintendency of Companies on 4 October 2023, regarding the payment of dividends using crypto-assets;
- External Letter No 220-139607, issued by the Superintendency of Companies on 17 July 2023, regarding the tokenisation of shares, among others; and
- the legal opinions issued by the Superintendency of Finance, namely No 52, issued on 22 June 2017; No 78, issued on 16 November 2016; and No 29, issued on 26 March 2014. These opinions relate to the potential risks associated with operations involving cryptocurrencies.

2. Are there any relevant policies, strategies or regulations applicable to digital transactions on the metaverse in your jurisdiction?

No.

3. How is property defined in the metaverse? Are there any relevant policies, strategies or regulations applicable to the ownership of digital assets on the metaverse in your jurisdiction?

There is no specific definition of property on the metaverse. Nevertheless, for tax purposes, the Colombian Tax Authority has clarified that a crypto-asset is possessed within the country when it is: (1) monetised in Colombia, that is, when it

¹⁰ Carlos A Arango-Arango, María M Barrera-Rego, Joaquín F Bernal-Ramírez and Alberto Boada-Ortiz, 'Cryptoassets', (Bank of the Republic of Colombia), <https://www.banrep.gov.co/es/publicaciones/documento-tecnico-criptoactivos>, accessed on 1 July 2024.



is traded with for legal currency or (2) it is used as a payment method (payment in kind) to acquire goods or services in Colombia.¹¹



4. How are property transfers regulated in your jurisdiction?

There is no specific regulation for property transfers in the metaverse.



5. How are currencies, including cryptocurrencies, used in the metaverse regulated in your jurisdiction? Who are the main stakeholders and what are their obligations? What sanctions (civil, criminal, administrative) may apply for non-compliance with these obligations?

There is no specific regulation of currencies, including cryptocurrencies, used in relation to the metaverse. However, the Colombian Central Bank and the Superintendency of Finance have been emphatic in concluding that cryptocurrencies are not legal currency admissible in Colombia, based on the provisions set out in Law No 31 of 1992.¹²



6. How are transactions and the ownership of assets in the metaverse taxed in your jurisdiction? What sanctions (civil, criminal, administrative) may apply for non-compliance with these obligations?

The Colombian Tax Authority assimilates crypto-assets with intangible goods that are subject to valuations, which are part of the owner's net worth and are reflected in the owner's income. As such, crypto-assets can be subject to income tax and withholding tax. In addition, the sale of crypto-assets can be subject to VAT if such crypto-assets are related to IP. For breaches of the tax obligations, the non-compliant individual or entity can be subject to criminal sanctions under Article 402 of the Colombian Criminal Code, and administrative sanctions provided in the Tax Code, depending on the nature of the breach and the specifics of the case.



7. Are there any upcoming policies, strategies or regulations that will impact digital transactions in your jurisdiction?

Yes, the Colombian government is soon to release a virtual assets bill that sets out a proposed legal framework for such assets for public consideration. The bill is being drafted jointly by the Superintendency of Finance, the Ministry of Information and Communication Technologies, the Ministry of Finance and Public Credit and the National Police of Colombia. According to news outlets, the bill aims to support innovation and the free market, protect consumers and investors, promote the adoption of risk management systems, legalise the relevant activities, provide legal security and is inspired by the EU's legal framework for virtual assets.¹³

11 Colombian Tax Authority, External Letter No. 100202208-1621 issued on 17 October 2023.

12 Among others, External Letter C19-49344 issued on 12 March 2019, by the Secretary of the Board of Directors of the Colombian Central Bank.

13 'Preparing the regulatory framework for virtual assets', (Portafolio, 14 September 2023), <https://www.portafolio.co/economia/finanzas/avanza-revision-del-marco-para-regular-activos-digitales-en-colombia-589152>, accessed on 1 July 2024.



8. Are there any upcoming policies, strategies or regulations that will impact the ownership of assets on the metaverse in your jurisdiction?

Yes, please refer to the response to Question 7 of this chapter.



Digital marketing and consumer protection

Ana María Castro, Lloreda Camacho & Co, Bogotá



1. Are there any relevant policies, strategies or regulations applicable to digital marketing on the metaverse in your jurisdiction?

There are no specific regulations related to digital marketing in the metaverse in Colombia. Any form of false advertising is prohibited, even when conducted through electronic means. Consequently, the advertised conditions are binding on the advertiser, including promotions and offers. Also, it is noteworthy that suppliers must adhere to the duty to provide information to the consumer, which requires that the information or advertisement presented to the consumer must be clear, truthful, sufficient and accurate.



2. Are there any relevant policies, strategies or regulations regarding misleading advertising or other unfair commercial practices on the metaverse in your jurisdiction?

On the subject of advertising in the digital world, the SIC has issued a *Guide for Advertising with Influencers*, which determines that the advertiser will be liable for damage caused by deceptive advertising announced by influencers on social media.

The sanctions applicable to all types of violation of consumer protection legislation include fines of up to 2,000 times the minimum wage in the country (approximately US\$657,500), the temporary or permanent closure of the establishment or the destruction of the product.

The provider is obliged to match the offer as advertised to the consumer. An example of a relevant case concerning this matter is the sanction issued to influencer Elizabeth Loaiza, who was sanctioned by Resolution 36872/2021 for advertising false Covid-19 tests through social media.



3. Are there any relevant policies, strategies or regulations aiming to promote consumer protection on the metaverse in your jurisdiction?

Any type of commercial relationship through electronic means, such as in the metaverse, must comply with the consumer protection provisions, as detailed in Chapter VI of Law No 1480 of 2011 and Law No 527 of 1999.

There is a difference between e-commerce, which involves conducting commercial transactions through data messages, and digital marketplaces. In both cases, the provider must comply with certain specific duties. For e-commerce, the providers of online platforms must provide the consumer with a limited right to withdraw from a transaction and the ability to reverse payments in certain circumstances, such as when a transaction is fraudulent.



4. What is the minimum information that should be provided to consumers? Who are the stakeholders responsible for providing this information?

The provider must provide clear, complete, truthful, verifiable, precise, comprehensible, up-to-date and transparent information. The applicable sanctions are the same as mentioned in the response to Question 2.

A relevant case in this regard is the sanction imposed on Mercado Libre, which concerned the role of e-commerce and online marketplaces. Mercado Libre is similar to Amazon and is probably the most popular e-commerce portal in Latin America. It was sanctioned through Resolution 55912/2016 for failing to comply with the consumer protection provisions, as the consumer was not informed about the nature of the digital platform, breaching the consumer protection obligations outlined above.



5. Are there any relevant policies, strategies or regulations applicable to platform-to-consumer relationships in your jurisdiction? What are the main obligations of the platform providers?

The providers of goods or services through electronic platforms have the following obligations as set out in Article 50 of Law No 1480 of 2011:

- the requirements to share their identity and contact information;
- the requirement to provide clear information about the product/s;
- the requirement to specify the validity period of the offers for sale and product availability;
- the requirement to inform consumers about the payment methods, delivery time, right of withdrawal and any other relevant information;
- the requirement to state the price in full, including taxes;
- the requirement to implement security mechanisms to ensure the protection of consumer and transaction information; and
- the requirement to deliver the order within a maximum of 30 days.

The sanctions for non-compliance are the same as mentioned in the response to Question 2.



6. Are any alternative dispute resolution mechanisms available to consumers in your jurisdiction? How are they implemented on the metaverse?

Apart from issues relating to class actions or liability for damages due to defective products, the SIC is responsible for resolving consumer disputes. The SIC has stated that binding the consumer to alternative dispute resolution (ADR) is unlawful if it precludes the possibility of filing a consumer protection action before the SIC.

The Conciliation Statute (Article 14, Law No 2220 of 2022) determines that in financial disputes involving consumers, supervised financial entities must appoint a financial consumer defender, as an available ADR mechanism for financial consumers.



7. Are there any upcoming policies, strategies or regulations that will impact digital marketing on the metaverse in your jurisdiction?

There are no upcoming policies that will impact digital marketing.



8. Are there any upcoming policies, strategies or regulations that will impact consumer protection on the metaverse in your jurisdiction?

There are no upcoming policies that will impact consumer protection.

Liability and insurance

Ana María Castro, Lloreda Camacho & Co, Bogotá

1. Are there any relevant policies, strategies or regulations applicable to liability on the metaverse in your jurisdiction?

There are no specific regulations concerning liability in relation to the metaverse.

2. Are there any relevant policies, strategies or regulations applicable to insurance for damages caused on the metaverse in your jurisdiction?

There are no specific regulations applicable to insurance for damages caused on the metaverse.

3. What are the applicable civil liability/tort liability rules in relation to the metaverse in your jurisdiction? Who are the responsible stakeholders in the case of damages?

Colombia does not have a specific regulation on liability applicable to the metaverse. However, damage caused in the metaverse is not exempt from repair because the general regime of civil liability and consumer protection would apply.

In such cases, the responsible stakeholder is the party causing the damage: the producer, supplier, provider or user. Moreover, the SIC may impose administrative sanctions for non-compliance with the consumer protection regime (Law No 1480 of 2011).

4. How are liability rules enforced in the metaverse in your jurisdiction? Who are the responsible stakeholders in the case of damages?

Please refer to the response to Question 3.

There is no specific case law or any regulatory decisions that address metaverse-related infringements.

5. What are the roles of intermediaries and gatekeepers when it comes to the enforcement of rights and liability in the context of the metaverse?

They would be responsible if they are causing the damage or if it is proven that they are in control or have the role of gatekeepers.



Q 6. What are some relevant insurance topics regarding the metaverse in your jurisdiction?

The challenges and risks associated with privacy and security in the metaverse are relevant insurance topics. Also, it is debatable whether metaverse service providers might be liable for any damage in the same way as internet service providers (ISPs).

Q 7. Are there any relevant policies, strategies or regulations applicable to criminal liability on the metaverse in your jurisdiction?

There are no specific regulations applicable to the metaverse in terms of criminal liability. However, some related regulations might apply to virtual spaces, such as:

- the Colombian Criminal Code, namely abusive access to a computer system (Article 269A), unlawful access to a computer system or telecoms network (Article 269B), interception of computer data (Article 269C), damage to a computer (Article 269D), use of malicious software (Article 269E), violation of personal data (Article 269F), impersonation of websites to capture personal data (Article 269G), theft using a computer or similar means (Article 269I) and non-consensual transfer of assets (Article 269J);
- it is debatable whether assault and battery, and even sexual crimes, can be committed in the metaverse;
- the Code of Criminal Procedure, namely the recovery of information captured while surfing the internet or generated through other technological means that produce equivalent effects (Article 236), the action of undercover agents (Article 242, 242B);
- Law No 1928 of 2018, concerning the adoption of the Convention on Cybercrime of 23 November 2001 in Budapest;
- the Policy Guidelines for Cybersecurity and Cyberdefence, CONPES 3701, 2011;
- the National Digital Security Policy, CONPES 3854, 2016;
- the National Trust and Digital Security Policy, CONPES 3995, 2020; and
- the Methodological Guide on Computer Crime Attention (September 2023).

Q 8. Are there any upcoming policies, strategies or regulations that will impact liability (civil/tort/criminal) on the metaverse in your jurisdiction?

No.

Q 9. Are there any upcoming policies, strategies or regulations that will impact insurance on the metaverse in your jurisdiction?

No.

Jurisdiction and governance

Ana María Castro *Lloreda Camacho & Co, Bogotá*

Q 1. Are there any upcoming policies, strategies or regulations setting out rules on how to identify the governing law in the metaverse?

No.

Q 2. Are there any upcoming policies, strategies or regulations setting out rules on how to identify the jurisdiction applicable to the metaverse? Is there any case law or are there any decisions by a regulator regarding determining jurisdiction in the metaverse in your jurisdiction?

No.

Q 3. What are the regulators and government bodies for ensuring compliance with the applicable laws on the metaverse in your jurisdiction?

The Superintendence of Industry and Commerce (SIC) and the National Copyright Office (DNDA) are the competent regulators in Colombia in relation to the metaverse.

Q 4. Are there any available dispute resolution mechanisms in your jurisdiction?

In Colombia, there are two types of dispute resolution mechanisms.

Alternative dispute resolution (ADR) mechanisms, which includes conciliation, where a neutral third party helps the parties reach an agreement; mediation, where a neutral third party facilitates communication between the parties so that an agreement can be reached; amicable settlement, where a neutral third party decides how to resolve the dispute; and arbitration, where a neutral third party decides how the dispute is resolved, and its decision is binding on the parties.

The second option concerns ordinary jurisdiction, which involves an ordinary lawsuit before a judge. In 2022, the Administrative Court of Magdalena held a hearing in the metaverse.

Q 5. How is arbitration implemented in the metaverse in your jurisdiction?

Beta testing is underway for the conduct of conciliation and arbitration hearings in the metaverse.



6. Are there any upcoming policies, strategies or regulations regarding determining the governing law and jurisdiction in the metaverse in your jurisdiction?

No.