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IBA Intellectual Property, Communications
and Technology Law Committee

Digital Regulations in the Metaverse Era

COSTA RICA

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Intellectual property

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

In a general perspective, Costa Rica's public policies and regulations are developed taking into consideration that technology and its implications must be a central starting point, and its use must be guaranteed for improved and more efficient results.

In this regard, on 12 December 2023, new legislation came into force, the 'Law to recognise as a fundamental right access to telecommunications, information technologies and communications throughout the national territory'. This Law incorporates an amendment to the National Constitution, adding as a fundamental right the access of telecoms, and information and communication technologies throughout the national territory for every person, and specifying that the state will guarantee, protect and uphold this right.

This starting point is not to be taken lightly, as it guarantees access to technology to every Costa Rican citizen. Despite the technical difficulties, it serves to demonstrate the interests of the country.

Additionally, the Ministry of Science, Innovation, Technology and Telecommunications has issued a National Science, Technology and Innovation Plan (the 'Plan') which specifically covers 2022–2027. The Plan sets down principles to be followed and goals to be achieved in sectors such as artificial intelligence (AI), bioeconomy, health research and development (R&D), digital technologies and aerospace development along with political and interinstitutional coordination.

Costa Rica is open to developing strategies and public policies in which technology is at the forefront.

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

These are covered in the concept of 'artistic and literary works of art' stated in the Costa Rican Copyright Law, which specifically determines which works are protected, stating 'whatever the form of expression'. A book is covered by copyright, not the book itself as a material object, but the expression or text it contains; similarly, an avatar will be covered as an intangible item.

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

Digital replicas are similarly protected by the Copyright Law, as they cannot be reproduced or shared in any way without the specific authorisation of the rights holder.

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

Costa Rican copyright law defines derivative works as those which result from the adaptation of an original work, as long as it is a different creation, with a character of originality. This requirement of originality is vital for a derivative work to have copyright protection.

Provided that there is an authorisation of the author of the original work, or if the original work is in the public domain, then a derivative work is protected by the Copyright Law, subject to moral and economic rights.

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

No, not as of February 2024.

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

As of February 2024, there have not been cases of infringement in the metaverse acknowledged by Costa Rican authorities. However, it is considered that an infringement in the metaverse will be regulated as an infringement in the physical world, as under the Law on Enforcement Procedures for Intellectual Property Rights which very accurately states that:

‘In the judicial and administrative examination of the injuries caused to the rights recorded and protected in this Law, the judge, the Industrial Property Registry or the Director of the National Registry of Copyright and Related Rights may resort to *rules of interpretation of the circumstances of manner, time and place* of the harmful actions, in such a way that the formalities inherent to the specific ways of regulating these rights do not prevent the practical application of the legal assumptions of protection to specific cases.’ (emphasis added)

This regulation is open and broad so that an infringement in the metaverse would be known and ruled on as in any other case.

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 still no strategies, policies or regulations which aim to promote interoperability in the metaverse in Costa Rica. However, in May 2023, the representatives of the Legislative Assembly (legislative body in charge of approving laws) supported a legislative forum to understand the consequences and implications of the metaverse before issuing any regulations. One of the topics discussed was the need of a guarantee of interoperability in the metaverse.



Q 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?

There is no case law in this regard. Neither are there any specific regulations. To date, the focus has been in granting fair access to all consumers, but not yet on the possible operators as such.

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

Not at this moment.

Q 10. What are the roles of metaverse providers?

There is currently no regulation which enlists the characteristics or requirements of metaverse providers in Costa Rica. However, according to general previous rules, the providers of these services must comply with minimum principles such as:

- receiving responsible advice on the actions that may be carried out;
- adhering to current legislation;
- proceeding with a responsible management of data and carrying out actions aimed at privacy protection;
- transparency in the management of user information;
- providing a safe environment and the taking actions necessary to maintain it; and
- providing fair access to all.

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

Although there is currently no regulation relating to the metaverse, the same rules for other forms of expressions would apply. For example, in Costa Rica, signs that are considered contrary to morality or public order, are not subject to registration. This is also the case for patents, utility models and industrial designs. If these should conflict with public order, morality or good customs, then they are not applicable for protection. A related filter would therefore apply to the metaverse.

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

Not at this moment.



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

Not currently. To date, policies have focused on more general aspects, such as freedom to access, not on specifics which may affect the intellectual property system.



Liability and insurance

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

In Latin America, there are currently several project laws under discussion regarding AI, but no relevant policies, strategies or regulations applicable specifically to liability in the metaverse.

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

In Latin America, there are currently several project laws under discussion regarding AI, but no relevant policies, strategies or regulations applicable specifically to insurance for damages caused in the metaverse.

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

Civil liability and tort liability are only applicable to individuals holding a legal personality. According to laws in Latin America, as avatars do not hold a legal personality, they will not be subject to any protection or responsibility according to civil law. To date, there is no case law regarding this matter in the region.

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

As stated above, liability rules are only applicable to individuals holding a legal personality. According to Latin American laws, avatars do not have a legal personality, so will therefore not be subject to any liability. To date, there are no case law regarding this matter on the region.

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

In most countries in Latin America, intermediaries or gatekeepers are not held responsible for the enforcement of rights and liability concerning digital law.



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

The protection of intangible assets in the metaverse through insurance is a topic which may become relevant in the near future.

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

To date, there are no criminal liability regulations or strategies applicable to the metaverse in Latin America.

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

Several countries, such as Colombia and Chile, are currently discussing changes that imply protection on AI. So far none on these changes are specifically related to the metaverse, but they might apply.

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

Several countries, such as Colombia and Chile, are currently discussing changes that imply protection on AI. So far none on these changes are specifically related to the metaverse, but they might apply.