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IBA Intellectual Property, Communications
and Technology Law Committee

Digital Regulations in the Metaverse Era

INDIA

Regional Coordinators:

Angela Flannery *Quay Law Partners, Sydney*

Yoshifumi Onodera *Mori Hamada & Matsumoto, Tokyo*



Data

Sajai Singh *J Sagar Associates, Bengaluru*

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

Data protection in India is currently governed by the Information Technology Act 2000 (the 'IT Act') and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (the 'Privacy Rules'). In 2023, the Indian government published the Digital Personal Data Protection Act (the 'DPDP Act'), which will form the regulatory regime for data protection in India. However, further actions on behalf of the government may be required to make the DPDP Act effective, such as publishing the rules and regulations required for its effective implementation and enforcement.

Data protection laws apply to the processing of personal data within the territory of India. They also apply to the processing of personal data outside India, where the processing relates to offering goods and services to individuals in India.

Therefore, the obligations placed on entities processing personal data may also apply to entities in the metaverse.

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

Data protection laws protect personal data and sensitive personal data. Personal data concerns any data about an individual that can identify that individual. Under the Privacy Rules, 'sensitive personal data or information' is information relating to:

- passwords;
- financial information, such as bank account/credit card/debit card details;
- a person's physical or mental health conditions;
- sexual orientation;
- medical records; and
- biometric information.

To collect and/or process sensitive personal data or information, entities are required to obtain explicit consent from the person to whom the information relates. However, under the DPDP Act, there is an obligation on entities to protect personal data uniformly in regard to all types of personal data.

Generally, entities processing personal data or sensitive personal data or information are required to implement reasonable security practices and procedures to protect personal data and prevent breaches. Such security practices must comply with the ISO/IEC 27001 standard. Further, entities collecting personal data are required to have in place a privacy policy or notice describing the categories of personal data being collected and the purpose of processing such data and are required to not retain the data longer than necessary, unless required by law.

Where personal data is transferred, entities are required to ensure that the entity to whom such data is being transferred maintains the same level of data protection that is provided under the laws in India. Further, the transfer of personal data to certain countries may be restricted under the DPDP Act. At present, there are no blacklisted countries, but the Indian government may publish a list in the near future.

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?

Data fiduciaries

Entities that determine the means and purposes of processing personal data are data fiduciaries (comparable to data controllers under the EU's General Data Protection Regulation (GDPR)), according to the DPDP Act. Data fiduciaries are responsible for fulfilling the obligations provided by the data protection laws. While such obligations may be contractually passed on to data processors, the responsibility for compliance is placed on data fiduciaries.

Accordingly, in the context of the metaverse, entities that determine which categories of personal data should be collected and processed would be deemed data fiduciaries and may be required to comply with the data protection obligations. For instance, the providers/sellers of metaverse products (such as augmented reality (AR)/virtual reality (VR) devices) may be data fiduciaries as they are involved in determining the collection and processing of users' personal data.

Data processors

Entities processing personal data on behalf of data fiduciaries are data processors. Data processors may be required to implement reasonable security safeguards to protect personal data. Further, if there is a breach, data processors may have to adhere to reporting obligations. Where personal data is to be transferred, data processors may not transfer personal data to countries according to which such transfers are restricted. Where the erasure of personal data is required, data processors may be required to comply with such a request in the form of instructions from the data fiduciary.

Data principals

Individuals to whom the personal data relates are data principals, according to the DPDP Act. Data principals can only be natural persons and, therefore, data protection laws do not apply to personal data belonging to companies or other corporate entities. In the context of the metaverse, the data principals would be the users who have provided their personal data to the relevant entities and/or platforms.

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?

India's data protection laws are based on the same principles as the GDPR. These principles are as follows:

- lawfulness, fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation;
- integrity and confidentiality; and
- accountability.

In the absence of any information to the contrary, the data protection principles that apply in ordinary contexts, would also apply to the metaverse.

At present, there is minimal enforcement of the data protection laws in India. Further, there is no information on any cases involving the violation of data protection principles in regard to the metaverse. However, in the case of any infringement or breach of the data protection obligations, civil penalties may apply.

The DPDP Act provides for the establishment of the Data Protection Board of India (DPBI), which will be responsible for the implementation and enforcement of its provisions. Once established, there may be increased enforcement in India.

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?

The data protection laws in India do not apply to non-personal data. The ownership of proprietary information, such as databases and datasets, may be protected under copyright law. There is no information on infringement of such laws in terms of the metaverse in India. Civil sanctions under copyright law may apply in regard to infringements.

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

Please see our responses in the chapter on digital marketing.

Q 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?

Under the DPDP Act, there are additional obligations on entities processing children's personal data. Individuals below the age of 18 are considered to be children. Data fiduciaries collecting children's personal data are required to obtain verifiable consent from their parents or legal guardian.

Data fiduciaries may not undertake any processing that is detrimental to the wellbeing of a child, engage in tracking or behavioural monitoring of the child or target any advertisements at children.

Q 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?

According to the Privacy Rules, personal data may be transferred to an entity outside India that maintains the same level of data protection that is adhered to by the transferring entity in India. Further, the data transfer may be carried out only if it is necessary for the performance of a lawful contract between the transferor and the provider of the information, or where the provider of the information has provided their consent.

Under the DPDP Act, personal data may be transferred, only under a valid contract, from India to any country that has not been specifically blacklisted by the Indian government. At present, no countries have been restricted in regard to data transfers, but the government may publish a list of prohibited destinations in the near future. Further, entities should maintain a similar duty of care with respect to the personal data being transferred.

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 rules applicable to automated decision-making in your jurisdiction?

Personal data may not be processed in order to make any decision on behalf of the data principal without their consent. Therefore, automated decision-making is not permitted under the data protection laws in India, unless consent has been obtained.

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

The DPDP Act provides the following rights to data principals:

- the right to access information about the categories of personal data collected and the purposes of processing;
- the right to correction and erasure of personal data;
- the right to withdraw consent for processing;
- the right to the redress of grievances; and
- the right to nominate another individual to exercise the data principal's rights in the event of their death or incapacity.

The notice being provided to data principals should contain information on how these rights can be exercised.

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

The Indian government has proposed the Digital India Act (DIA), which is set to replace the existing IT Act. The provisions set out in the DIA may affect the use of data in the metaverse. However, a draft of the DIA is not available in the public domain. Reports suggest that the DIA aims to provide a comprehensive legal framework for India's digital ecosystem. The DIA will focus on ensuring an open internet, user safety and trust and addressing cyber threats. It may be more adaptable to the fast-evolving nature of the digital landscape in order to safeguard users against a range of cyber threats.

Cybersecurity

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

The Ministry of Electronics and Information Technology appointed the Indian Computer Emergency Response Team (CERT-In) and issued: (1) the Information Technology (The Indian Computer Emergency Response Team and Manner of performing functions and duties) Rules 2013 (the 'CERT-In Rules'), along with (2) the Directions, dated 28 April 2022, on information security practices, procedure, prevention, response and reporting of cyber incidents (the 'CERT-In Directions'), to protect and regulate cyberspace in India.

The CERT-In Rules and CERT-In Directions place requirements on all entities regarding cybersecurity incidents in India, irrespective of whether the entity is incorporated in or outside India. In cases where cybersecurity incidents in the metaverse relate to computer resources in India or the data of Indian residents, these rules and directions may be applicable.

Q 2. What are the secure-by-design (physical and digital interfaces) principles applicable to the metaverse in your jurisdiction?

Regarding security-by-design principles, the CERT-In has issued Guidelines for Secure Application Design, Development, Implementation and Operations, which assists entities in implementing secure practices when designing applications. However, it should be noted that these guidelines are not mandatory and are meant to guide entities during the design, development, audit or deployment of applications and operations.

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?

To date, there have been no publicly reported cyber incidents in the metaverse in India. The CERT-In Directions mandate that all service providers, intermediaries, data centres, corporate bodies and government organisations report cyber incidents to CERT-In within six hours of becoming aware of such an incident or being notified of such an incident. The type of cybersecurity incidents that must be reported within six hours are provided in Annex I of the CERT-In Directions or incidents meeting the following criteria:

- cyber incidents and cybersecurity incidents of a severe nature (such as denial of service attacks, distributed denial of service attacks, intrusions, the spread of computer contaminants, including ransomware) that impact on any part of public information infrastructure, including backbone network infrastructure;
- data breaches or data leaks;
- large-scale or frequent incidents, such as intrusion into computer resources, websites, etc; and
- cyber incidents affecting human safety.

Further, when an order or direction from CERT-In is received, the service provider, intermediary, data centre or body corporate is required to take action and, for this purpose, an individual may be appointed to correspond with CERT-In.

Additionally, an intermediary is required to report cybersecurity incidents as part of its due diligence requirements. For further information on these due diligence requirements, please refer to the chapter on liability and insurance.

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

In India, there are currently no prescribed cybersecurity standards specific to the metaverse.

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

The Indian government plans to propose the Digital India Act (DIA), which will replace the current information technology framework. However, there is no indication as to when it will be enacted in the near future and a draft of the DIA is not available in the public domain.



Digital identity and authentication

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

At present, there are no digital identity and authentication regulations that apply to the metaverse in India. However, different types of financial transactions involving certain entities may trigger digital identity and authentication requirements under specific sectoral laws. There is no specific guidance on the application of such sectoral laws to the metaverse.

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?

Given that there are no laws in India on digital identity and authentication in the metaverse, there is no guidance on the different tiers and types of digital identity or the respective levels of protection in the context of the metaverse.

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

Self-determination is not recognised under the laws in India. Consequently, there is no guidance on exercising self-determination in the metaverse or the possible sanctions. There is also no case law in this regard.

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

There are no regulations that apply to intermediary ID providers in India.

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

There are no upcoming regulations affecting the digital identity and authentication process in the metaverse.

AI in the metaverse

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

There are no codified laws, rules or regulations specifically applicable to artificial intelligence (AI) in India. The government's National Institution for Transforming India (NITI) Aayog, which is a policy commission, published a National Strategy for AI in 2018, and an article entitled 'Responsible AI' in 2021, which outline the ethical considerations and principles for responsible AI use. However, these are informal guidelines and do not impose mandatory obligations on AI use in India.

2. How is transparency and accountability in terms of AI ensured in your jurisdiction?

There are no codified laws ensuring the transparency and accountability of AI in India and there is currently no active enforcement and scrutiny of AI. The Ministry of Electronics and Information Technology could, in future, potentially take up the role of enforcing and monitoring compliance in regard to AI.

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

Entities that publish content on their platforms and relevant intermediaries are protected from liability for any third-party content published on their platforms, subject to compliance with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (the 'Intermediary Guidelines').

However, an intermediary involved in algorithmic or search bias by virtue of their AI models being discriminatory will not receive protection under the safe harbour provision in the Intermediary Guidelines, as such action is violative of the safety and trust obligations placed on intermediaries under the guidelines. This would make the intermediary liable for offences under the Information Technology Act 2000 (the 'IT Act').

Users aggrieved by such actions can file a complaint with the authorities and appropriate actions may be taken against the intermediary.

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?

Currently, AI is not recognised as a legal entity in India. Consequently, content generated solely by AI may not qualify for copyright protection under the Copyright Act 1957. There is no guidance on the use of AI-generated content in the metaverse and who would be considered the rightsholders of such content.



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

Providers of the AI system may be subject to liability as a publisher of the content produced by AI. However, if a provider of AI can substantiate that they operate as an intermediary, they may potentially avoid liability for the content generated by the AI and may be eligible for safe harbour protection under the IT Act.

However, there is currently no active enforcement and scrutiny of AI in India.



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

The Indian government has proposed to regulate AI through the Digital India Act (DIA). However, there is no indication as to when the enactment of the DIA will occur in the near future.



Human rights, accessibility and digital ethics

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

Several internationally recognised human rights are incorporated into the Constitution of India as fundamental rights and as offences relating to such human rights are detailed in several criminal laws. However, the applicability of these rights in the context of the metaverse is uncertain because digital avatars have not been granted legal personhood in India.

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

Certain laws in India do seek to offer protection in regard to emerging issues relating to the mental health of individuals in the digital realm. For instance, the right to life under Article 21 of the Indian Constitution is interpreted broadly, encompassing the right to live with human dignity, the right to privacy and the right to health, etc. Provisions in the Information Technology Act 2000 also protect individuals from cyberbullying and similar offences. However, it is unclear whether an offence committed against a digital avatar can amount to an offence against the relevant user. The legal identity of avatars has to be ascertained for any law to apply in such cases.

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?

The Indian Constitution provides the right to equality and the right to not be subject to discrimination. While rights do extend to individuals in virtual spaces, it is unclear how these rights would apply to digital avatars in the metaverse.

There has not been any enforcement action nor is there any case law regarding infringements of these rights in the metaverse.

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

Article 19(1)(a) of the Indian Constitution provides for the right to freedom of speech and expression. This fundamental right encompasses a wide range of communicative mediums, including print, film and online media. This right also applies to evolving modes of communication, such as the internet. Courts in India have also recognised the internet as a platform for the exercise of this right to the freedom of speech and expression in the case of *Anuradha Bhasin v Union of India*, (2020) 3 SCC 637.

However, the application of this right in the metaverse is uncertain.



Q 5. Are there any strategies, policies or regulations in your jurisdiction aiming to ensure accessibility and inclusion in the metaverse? How are they enforced?

There are no regulations nor is there any case law in India regarding accessibility and inclusion in the metaverse.

Q 6. Are there any policies, strategies or regulations in your jurisdiction focused on ensuring the protection of minors in the metaverse?

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (the 'Intermediary Guidelines') provide for the prevention of online abuse and the prevention of the exploitation of children on the internet, by mandating intermediaries to remove any explicit content and report any material that may be abusive towards children. Further, the Digital Personal Data Protection Act 2023 (the 'DPDP Act') also contains provisions that restrict the processing of children's personal data regarding activities that may be detrimental to their wellbeing and prevent behavioural tracking or monitoring of children. While there is no specific guidance on the matter, these laws are also likely to apply on the metaverse.

Q 7. Are there any policies, strategies or regulations in your jurisdiction focused on ethics-by-design in the metaverse? How are these rules enforced?

There are no regulations nor is there any case law in India focused on ethics-by-design in the metaverse.

Q 8. Are there any upcoming policies, strategies or regulations that will impact human rights, accessibility and digital ethics requirements in your jurisdiction?

The proposed Digital India Act (DIA) may contain provisions affecting accessibility and digital ethics in the metaverse. However, a draft of the DIA is not available in the public domain.

Competition law

1. Are there any strategies, policies, regulations or best practices on how to carry out an antitrust or competition risk assessment?

The Central Consumer Protection Authority (CCI) has released a Compliance Manual for Enterprises, which provides a general competition risk assessment guide for enterprises, but this manual is not binding on entities in India.

The Competition Act 2002 prohibits anti-competitive agreements and the abuse of dominance in the relevant market and mandates reporting on mergers and acquisitions to the CCI. The sanctions imposed for violating any provisions in the law are monetary, except for a violation of the CCI's orders under certain circumstances.

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

The Competition Act elucidates the trade practices that come under the ambit of abuse of a dominant position and bans such practices. It states that there will be an abuse of a dominant position when an enterprise indulges in a practice or practices resulting in the denial of market access. The CCI, when inquiring as to whether an enterprise enjoys a dominant position, is required to assess the specific entry barriers applicable, including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, and a high cost related to substitutable goods or services for consumers in India.

These general rules aimed at preventing the abuse of market dominance and anti-competitive agreements that create barriers to entry under the Competition Act 2002 may also apply to metaverse platforms and businesses. Civil sanctions will apply to entities that fail to comply with an order from the CCI.

3. Are there any specific gatekeepers' obligations applicable to the metaverse in your jurisdiction?

In India, there are currently no obligations placed on gatekeepers specific to the metaverse. However, the Standing Committee on Finance's (SCF's) 2022 report, *Anti-Competitive Practices By Big Tech Companies*, made recommendations for the identification of gatekeepers, or so-called 'systemically important digital intermediaries' (SIDIs). SIDIs would be leading players in digital markets that can negatively influence competitive conduct and would be categorised based on their revenue, market capitalisation and the number of active businesses and end users involved.

General sanctions for the abuse of a dominant position or other anti-competitive practices would apply to such digital platforms or gatekeepers as prescribed in the Competition Act. For instance, in *XYZ (Confidential) v Alphabet Inc Case No 07 of 2020*, the CCI penalised Google for abusing its dominant position in the app market ecosystem by imposing mandatory use of Google Play's payment system for purchasing apps, while excluding other payment options.

4. 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?

The Competition Act sets out various prohibitions on anti-competitive agreements, abuse of a dominant position or a combination of such practices, etc, which help ensure fair competition between participants in the market. These

restrictions against anti-competitive agreements promote fair and non-discriminatory practices by allowing accessibility for all businesses.

Further, with respect to licences, the CCI may analyse the licensing terms detailed in intellectual property licences and decide whether any restrictions may be considered anti-competitive. For a violation of this restriction on anti-competitive agreements, entities may be liable for monetary penalties.

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

There are currently no competition law policies or guidelines pertaining to interoperability in the metaverse. Interoperability remains a primary challenge to the effective functioning of the metaverse, by guaranteeing interoperability between different virtual worlds to provide a seamless user experience.

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

The SCF has recommended the enactment of a Digital Competition Act through its report entitled *Anti-Competitive Practices by Big Tech Companies*,¹ to ensure a fair, transparent and contestable digital ecosystem. Thereafter, the Ministry of Corporate Affairs has directed the Committee on Digital Competition Law (CDCL) to prepare a draft bill on the matter.² Further, the CCI is looking to set up a digital markets and data unit to examine anti-competitive conduct in the technology space. The CDCL will examine the need for an ex ante regulatory approach for technology companies and finalise the draft Digital Competition Act.

1 Lok Sabha Secretariat, 53rd Report, *Anti-Competitive Practices By Big Tech Companies*, 17th SCF, December 2022, https://eparlib.nic.in/bitstream/123456789/1464505/1/17_Finance_53.pdf accessed on 17 August 2024.

2 Ministry of Corporate Affairs, Constitution of the Committee on Digital Law – regd, Order No COMP-06/11/2022, 6 February 2023, <https://images.assettype.com/barandbench/2023-02/7e93ae0c-05b9-4565-9b5b-a9a6103ac6ff/Order.pdf> accessed on 17 August 2024.

Intellectual property

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

In India, there are currently no intellectual property policies, strategies or regulations specific to the metaverse. However, the intellectual property rights already in force may also extend to intangible property in the metaverse.

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

The Copyright Act 1957 protects copyrightable works in the metaverse that are original and fixed in a tangible medium of expression. These works may include virtual objects, buildings and avatars. While non-fungible tokens (NFTs) that are used to verify ownership, are themselves not copyrightable, the underlying works that they represent, such as digital art, memes or music, may be subject to copyright protection. Further, avatars may also be protected under the protected personality rights of individuals; however, there are no related judicial precedents in this regard in the context of the metaverse in India.

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

Digital replicas of real-world physical objects may be protected, because the meaning of 'copyright' under the Copyright Act 1957 includes reproducing the work in any material form, including: (1) storing it in any medium by electronic or other means; (2) depicting two-dimensional works in three-dimensions or vice versa; and (3) adapting any existing work, in cases where the physical object is itself a protected work. Therefore, due to the broad meaning of copyright in the Copyright Act 1957, digital replicas of physical objects may fall under copyright protection.

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

Copyrightable user-generated content and other derivative works may be protected in India and, accordingly, the user may fall within the meaning of an author in relation to such literary, dramatic, musical or artistic works that are computer generated, as the user is the person who causes the work to be created.

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

While there are collective rights management organisations operational in India, it is unclear whether they also manage intellectual property (IP) rights in the metaverse.



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

In India, there has not been any enforcement action in regard to intellectual property rights and sanctions in regard to related works in the context of the metaverse. However, the relevant provisions in the Trademarks Act 1999, the Copyright Act 1957, the Design Act 2000 and the Patents Act 1970 may extend to protect intellectual property rights in the metaverse.

Q 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 is currently no intellectual property law-related policies or guidelines pertaining to interoperability in the metaverse. Interoperability remains a primary challenge to the effective functioning of the metaverse, by guaranteeing interoperability between different virtual worlds to provide a seamless user experience.

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?

The CCI is permitted to analyse the licence terms relating to intellectual property to ensure that any unfair and discriminatory terms do not lead to the abuse of a dominant position by an intellectual property rightsholder or have an adverse effect on competition in India.

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

The legal recognition and protection of intellectual property in the metaverse may be a challenge in the virtual context owing to the absence of jurisdictional boundaries. Further, there will be a requirement for better traceability and technological controls to identify intellectual property rights violations in the metaverse.

Q 10. What are the different roles of metaverse providers?

Metaverse providers may be entitled to protection of their proprietary software through copyright under the Copyright Act 1957. Further, for any trademarks or designs used in the provision of the metaverse may be protected under the Trade Marks Act 1999 or the Design Act 2000.

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

Freedom of expression is a fundamental right enshrined in India's Constitution, under Article 19(1)(a). However, this right is not absolute and reasonable restrictions can be imposed pursuant Article 19(2) to safeguard certain specific interests, such as national security, public order and the integrity of the state.

Intermediaries are protected from liability for third-party content published in the metaverse, under the safe harbour provision in Section 79 of the Information Technology Act 2000, if they fulfil the prescribed due diligence requirements. As part of the due diligence requirements, social media intermediaries may be required to carry out due diligence and moderate information and communications by third parties on their platforms.

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

There are no by-design notice mechanisms prescribed under the intellectual property laws in India.

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

There are no upcoming policies, strategies or regulations that will impact intellectual property in the metaverse.



Digital transactions and ownership

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

There is no unique legal framework for NFTs, tokens or digital assets in India. However, different laws in India have included NFTs and digital assets within their scope and applicability. For instance, NFTs and cryptocurrency have been included within the scope of virtual digital assets under the Income Tax Act 1962 and are taxable at a rate of 30 per cent.

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

Digital transactions in India are regulated by the Reserve Bank of India (RBI) and the National Payments Corporation of India (NPCI). Digital transactions, such as those involving electronic cash transfers, prepaid payment instruments and card payments, are regulated by the RBI. The RBI publishes rules and regulations concerning digital payment system security, risk management, client protection and other factors. The NPCI operates and manages payment systems, such as the Unified Payment Interface (UPI), the Immediate Payment Service (IMPS) and the Bharat Bill Payment System (BBPS). The NPCI creates and operates these systems, ensures their efficiency and security and resolves payment-related issues.

All methods of digital payments in India, including payments made through mobile wallets, prepaid cards and online platforms, are governed by the Payment and Settlement Systems Act 2007.

While there is no specific guidance on these regulations as applied to digital transactions in the metaverse, where such transactions are conducted using fiat currencies, such as the Indian rupee and through entities regulated by the RBI, the existing regulations may apply to transactions in the context of the metaverse as well.

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

There is no definition of property in the metaverse in any Indian laws. There are also no regulations specifically applicable to the ownership of digital assets in the metaverse.

Q 4. How are property transfers regulated in your jurisdiction?

Property transfers are regulated under the Transfer of Property Act 1882 (TOPA). The TOPA governs transfers of movable and immovable property in India. There is no specific guidance on the application of TOPA to the metaverse.

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

The use of cryptocurrencies in the metaverse is currently not regulated in India.

Q 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?

Under the Income Tax Act 1962, any income arising from the sale or transfer of crypto assets or NFTs is subject to a 30 per cent tax rate, with no deductions permitted, except for the cost of acquisition. Additionally, a one per cent tax deducted at source is applicable on the sale or transfer of crypto-assets or NFTs.

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

The proposed Digital India Act (DIA) may provide regulations on digital transactions. However, the draft of the DIA is not available in the public domain.

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

There is no information on any upcoming regulations affecting the ownership of assets in the metaverse.



Digital marketing and consumer protection

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

In India, digital and non-digital advertising practices are governed by general laws on the overall regulation of advertising. The Consumer Protection Act 2019 and its rules regulate any misleading advertisements and other unfair trade practices. Similarly, a self-regulating body, the Advertising Standards Council of India (ASCI) that is recognised by courts in India lays down the code for self-regulation. There are also special statutes for regulating and/or prohibiting the advertising of specific products or services, such as cigarettes, magical remedies and alcohol.

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

In India, the Consumer Protection Act 2019 established the Central Consumer Protection Authority (CCPA), which is responsible for matters relating to consumers rights, unfair trade practices and false or misleading advertisements that are prejudicial to the interests of the public. In 2022, the CCPA issued the Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022, which lay down the conditions for non-misleading and valid advertisements and the conditions for what is known as bait advertisements. These guidelines also ban surrogate advertising and lay down the conditions for advertisements targeted at children. Furthermore, the guidelines also detail the duties placed on manufacturers, service providers, advertisers and advertising agencies.

The CCPA is permitted to issue directions to manufacturers, advertisers and endorsers, as well as levying penalties in response to misleading advertisements. The failure to comply with an order by the CCPA may lead to sanctions under the Consumer Protection Act 2019. Such sanctions can be civil, criminal or administrative in nature.

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

There are currently no specific regulations aimed at promoting consumer protection in the metaverse. However, the guidelines issued by the CCPA may extend to the metaverse and may be used to promote the rights of the users as consumers. In November 2023, the CCPA issued the *Guidelines for the Prevention and Regulation of Dark Patterns* to restrict the use of dark patterns or manipulative design practices by online platforms when designing their user interfaces and user experiences that may impair user autonomy, influence decision-making and work to the detriment of users. The guidelines apply to sellers, advertisers and all platforms that systematically offer goods and services in India and may include metaverse platforms and advertisers within its ambit.

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

Under the Consumer Protection Act 2019, consumers are granted the right to access adequate information relating to the quality, quantity, potency, purity, standard and price of goods, products or services. Further, the deliberate withholding of relevant information by the seller from consumers may be considered a deficiency in the provision of products or services and will impose liability on the seller. Sanctions for the same may be civil or criminal in nature.

Further, the Consumer Protection (E-Commerce) Rules 2020 (the 'E-Commerce Rules') require all e-commerce entities to inform consumers, in clear and accessible manner on its platform, the legal name of the e-commerce entity, the principal geographic address of its headquarters and all branches, the name and details of the website/platform and the relevant contact details, such as the email address, fax, landline and mobile numbers of the customer care team, as well as that of the grievance officer. An e-commerce entity includes a person who operates and manages an electronic facility or platform used for electronic commerce. While presently there is no enforcement of these rules in terms of the metaverse, it is possible that businesses in the metaverse may be required to comply with these rules in future.

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

The E-Commerce Rules set out the requirements for inventory and marketplace-based e-commerce entities to regulate the e-commerce sector and safeguard consumer interests. The requirements under the E-Commerce Rules include providing clear information about the sellers, products, terms of sale and return policies, establishing a grievance officer to address consumer complaints, and the prevention of listing counterfeit products or other practices that adversely affect consumers. The sanctions for contravention of these rules may be civil and criminal in nature.

6. Are there alternative dispute resolution mechanisms available for consumers in your jurisdiction? How are they implemented in the metaverse?

Yes, the Consumer Protection Act 2019 requires each state's government to establish consumer-related mediation services and allows for alternate dispute resolution mechanisms.

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

There are no upcoming policies that will impact digital marketing in India.

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

There are no upcoming policies that will impact consumer protection in India.



Liability and insurance

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

In India, there are currently no policies, strategies or regulations specific to liability in the metaverse. However, as elucidated in the previous chapters, certain existing laws may extend to the metaverse and potentially inflict liability on the actors involved in the metaverse for non-compliance including, but not limited to: (1) the Information Technology Act 2000 (the 'IT Act') and the rules thereunder; (2) the Digital Personal Data Protection Act 2023; and (3) intellectual property laws, such as the Copyright Act 1957.

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

There are currently no policies, strategies or regulations specific to insurance for damage caused in the metaverse. However, the existing law on insurance may extend to any insurance policy in India provided to users for insurance for damage in the metaverse.

By way of background, the Insurance Regulatory and Development Authority of India (IRDAI) is the regulatory body formed under the Insurance Regulatory and Development Authority Act 1999, for supervision, development and enforcement in the insurance sector.

Due to the increase in cybersecurity incidents, in 2021, the IRDAI released a *Guidance Document on Product Structure for Cyber Insurance*. The guidelines cover cyber insurance as a form of insurance designed to cover the fees, expenses and legal costs associated with cyber breaches that occur after an organisation has been hacked or as a result of theft or loss of client/employee information. In cases where such cyber insurance is provided to users in the metaverse to protect them from cybercrimes, these non-binding guidelines from the IRDAI can be applied. Such insurance policies may cover losses including direct or first-party losses, losses/costs due to regulatory actions, crisis management costs or losses arising from liability claims.

Furthermore, such cyber insurance can also cover damage occurring from cybercrime related to the theft of funds, identity theft, phishing, cyber extortion and data breaches in the metaverse.

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

There are no specific laws or liability rules in regard to the metaverse, and the courts and, to date, the regulators in India have not sanctioned any actors involved in the operation of the metaverse.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (the 'Intermediary Guidelines') define 'intermediary' to be any person/entity who on behalf of another person/entity receives, stores or transmits a record or provides any service with respect to a record, which includes telecoms service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online auction sites, online marketplaces and cyber cafés.

Due to such a broad definition of an intermediary, it may include metaverse providers within the ambit of an intermediary. In India, intermediaries are protected from liability for third-party content published on its platform under the safe harbour protection provided in Section 79 of the IT Act, as long as the intermediary fulfils the due diligence requirements prescribed in the Intermediary Guidelines.

Where an intermediary fails to observe the due diligence requirements, an intermediary may be liable for penalties set out in the laws in force, including the provisions of the IT Act and the Indian Penal Code 1860. The sanctions therein may be civil, criminal or administrative in nature.

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

There has not been any enforcement action in terms of the liability rules in the context of the metaverse. However, as stated above, metaverse providers may fall within the meaning of intermediaries and may be protected against any liability related to the content published.

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

According to the Intermediary Guidelines, an intermediary is liable for third-party information if it fails to comply with the due diligence requirements or if on receiving actual knowledge or receiving a notice from the government that any information residing on or connected to a computer resource, which is managed by the intermediary, is being used to commit an illegal act and the intermediary, thereafter, does not efficaciously remove that information.

Further, the Intermediary Guidelines prescribe additional due diligence requirements for social media intermediaries that qualify as a significant social media intermediary. Among these requirements, is the obligation to enable the identification of the 'first originator' of any information published on its platform. These requirements will face a challenge in terms of their application to the metaverse, as the user's identity is always pseudonymised when using blockchain technology.

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

There are no relevant insurance topics specific to the metaverse. Although the IRDAI has published guidelines for cyber insurance, these guidelines are not binding.

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

There are currently no policies, strategies or regulations that inflict criminal liability in the context of the metaverse.

However, criminal liability for offences committed through the use of the internet, electronic devices and other related devices, which are covered in certain statutes, such as the Indian Penal Code 1860 or IT Act, may extend to the metaverse as well. The enforcement of such criminal liability rules in regard to the metaverse will face challenges, due to the anonymisation of users involved in the metaverse.



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

The Indian government has proposed the Digital India Act (DIA), which will replace the current information technology framework. However, there is no indication as to the timing of the enactment of the DIA in the near future and a draft version of the same is not available in the public domain.

Q 9. Are there any upcoming policies, strategies or regulations related to insurance in the metaverse in your jurisdiction?

There are no upcoming policies or regulations in India that will impact insurance in the metaverse.

Jurisdiction and governance

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

There are no upcoming policies, strategies or regulations on identifying the governing law in regard to the metaverse.

2. Are there any upcoming policies, strategies or regulations setting out rules on how to identify the jurisdiction in regard 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?

Please see our response to Question 1 above.

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

The competent regulator and government bodies for ensuring compliance with each of the laws would depend on the applicable law. At present, there is no dedicated authority or regulator in India that oversees compliance with the applicable laws in the metaverse.

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

While there are dispute resolution mechanisms in India, no such mechanisms have been applied in the context of the metaverse.

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

There are no instances where arbitration has been implemented in the metaverse in India.

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

There are no upcoming policies, strategies or regulations in India on identifying the governing law and jurisdiction in regard to the metaverse.