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Protection of personal and non-personal
data in the metaverse

MEXICO

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Data

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1. What data protection rights can be protected in the metaverse?

Some of the most important rights that data protection laws must protect and recognise in the context of the metaverse are the sovereignty of a person's digital identity and the right to remain anonymous. Equally important is a data subject's right of enforcement against any and all unethical processing of personal data arising from their use of the metaverse. The implementation of such data protection measures would make a significant contribution to safeguarding a subject's identity and protecting their rights in the midst of such technological advancements.

2. How can personal data (eg, user, device, third-party and avatar-related data, such as personally identifiable information (PII), synthetic and inferred data, etc) be associated with an individual in the metaverse?

In order to understand how personal data can be associated with an individual in the metaverse, first, we need to understand that data subjects interact in the metaverse through the use of an avatar.

What is an avatar?

The writer Olivia Andrea Mendoza Enríquez defines an avatar as a graphic representation that is associated with a user for identification purposes in a video game, internet forum or video conference, etc. This graphic representation is selected by the user and can often reflect the user's characteristics and personality; therefore, it may be considered to be an extension of the person.

In regard to this concept, the protection of the personal data of an individual or their avatar in the metaverse is provided through the application of the LFPDPPP and its regulations.

This law does not distinguish the way or manner in which personal data is collected for it to be applicable and, on the contrary, it contains various rules applicable to the collection or management of personal information by digital means, which is the basis of any virtual world, thus causing the collection and management of personal data in the metaverse (such as synthetic and inferred data) to fall within the scope of application of the law.

Like in the real world, informed consent needs to be mandatory in order to collect personal data in the metaverse. It is important to consider that for minors (individuals under 18 years of age), the consent of their parents or legal guardians is required in order to collect and process their personal data in the metaverse. Article 16 of the LFPDPPP specifically addresses the processing of the personal data of minors, indicating that such processing must consider the minor's best interests and requires the consent of their parents or legal guardians, except in certain cases specified by law. This applies to any natural person accessing the personal data of minors.

As mandated by the LFPDPPP, it is necessary to present metaverse users with a privacy notice and for users to provide their consent for the collection and processing of their personal data, prior to providing their personal data, in the context of the metaverse.

The LFPDPPP establishes the principles and obligations for the processing of personal data by private entities, hence such legislation would apply to protecting metaverse users' rights.

As imposed by the LFPDPPP, data controllers operating in the context of the metaverse are required to implement adequate security measures to protect users' personal data against any unauthorised access, loss, alteration or improper disclosure. Also, from a certain perspective, we could consider the avatar as an extension of the data subject's personality, which means that it would need to be protected as a human right, specifically in regard 'to the free development of personality'.

In terms of personal data protection in the metaverse, as applies to Mexican territory, parties involved in the collection, management, processing or use of personal data must adhere to the principles and obligations set out in the LFPDPPP. This includes obtaining the consent of individuals (through their avatars) for the processing of their data, thus ensuring its security and confidentiality, while limiting its use to only those purposes for which consent has been given. The LFPDPPP establishes certain principles that apply to activities involving the collection and processing of personal data, which are consent, purpose, quality, security, confidentiality, temporality and availability of personal data.

Some of these data protection principles that need to be adhered to by data controllers are as follows:

- informed consent: as required by the LFPDPPP, the informed consent of the data subject is mandatory for the collection and processing of their personal data in the metaverse. Depending on the type of data to be collected, the user's consent may be tacit, express or written;
- purpose as it pertains to data minimisation: companies or data controllers must limit the collection and processing of personal data to the minimum necessary for the specific purposes for which the data has been collected and such purpose should be clearly described to the user before obtaining their consent; and
- security and confidentiality: adequate security measures must be implemented to protect users' personal data in the context of the metaverse and to ensure its confidentiality.

The most common types of breaches of these principles include excessive data collection without proper consent, the unauthorised use of personal data, a lack of security measures to protect personal data and a lack of transparency about how the collected data is used.

One of the most important topics to mention when talking about the protection of personal data in the metaverse, relates to the transfer of personal data. The LFPDPPP establishes, as an obligation placed on the data controller, the requirement to communicate with the data subject if they intend to transfer their data to other national or foreign third parties. Data controllers must communicate such information in a privacy notice, as well as the purposes for transferring such data. The relevant data subjects will have to consent to such a transfer by accepting (with express consent) the privacy notice. Furthermore, Mexican data privacy law establishes that if personal data is transferred, the third-party recipient is obliged to assume all the obligations of the data controller that transferred the data.

The law contemplates some cases in which such data transfers may be conducted without the data subject's consent, namely: (1) in specific cases provided by law, the transfer of personal data may be carried out without the consent of the data subject; (2) when the transfer is necessary to fulfil obligations arising from a contract concluded or to be concluded in the interest of the data subject; or (3) when the data transfer is necessary for disease prevention or medical diagnosis, the provision of healthcare, medical treatment or the management of healthcare services.

Considering that the metaverse has no physical location, but happens within a 'parallel virtual universe', the transfer of data as we know it represents a legal challenge due to its extraterritoriality.



3. Which Mexican authorities monitor the enforcement of the rules on personal data?

In Mexico, the regulatory authority that monitors the enforcement of the LFPDPPP is the National Institute of Transparency for Access to Information and Personal Data Protection (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales or INAI), which has the power to enforce and impose sanctions in the case of non-compliance with the law on privacy.

The sanctions that the Mexican data protection authority (DPA) may impose, based on the LFPDPPP, range from an admonition and indication of corrective measures through to severe monetary penalties. The corrective measures may include implementation of the measures outlined in the data protection guidelines. Data controllers may be obliged

to develop and implement internal data protection policies that comply with the standards set by the law and may be required to conduct an internal audit (ie, controllers may be required to conduct internal audits to assess and ensure their compliance with the data protection regulations). Also, the INAI may impose an order to temporarily suspend the activities of the entity in serious cases of infringement, which may last until the deficiencies are corrected by the infringing party.

Considering the letter of the law, as well as the relevant international standards, data controllers are obliged to implement top notch security measures to protect users' personal data in the metaverse in order to prevent data breaches, with the risks exponentially multiplied in these sorts of virtual environments.

As mentioned above, the LFPDPPP establishes principles and obligations for the processing of personal data, including the use of algorithms and automated systems for making decisions based on such personal data (such as cookies). The law emphasises the importance of transparency and informed consent and provides data subjects with the right to access, rectify, cancel or oppose the collection or processing of their personal data (so-called 'ARCO rights'). These rights of the data subject apply in the context of the metaverse and to the use of avatars as well.

Additionally, it is worth mentioning that currently in Mexico there are various proposed bills aimed at regulating artificial intelligence (AI) and machine learning (ML), with the most relevant being the one promoted by Congressman Ricardo Monreal Ávila. These initiatives seek to provide a basic regulatory framework for AI and, although they do not expressly mention the metaverse, the integration of these technologies (AI, ML and the metaverse) in practice make it impossible for this law, if approved by the Mexican Congress, not to impact the operation of the metaverse when involving Mexican users or activities in Mexico.

An example of this is Article 16 of Senator Monreal's initiative, which sets forth that:

'Developers, providers, and users of artificial intelligence systems that generate or manipulate image, sound, or video content that closely resembles existing persons, objects, places, or other entities or events, and that may misleadingly induce a person to think they are authentic or true, must ensure that those who access such content are aware that it has been artificially generated or manipulated by an artificial intelligence system.

The obligation outlined in the previous paragraph shall not apply to artificial intelligence systems authorised by law for purposes of detection, prevention, investigation, or prosecution of crimes, unless these systems are made available to the public for reporting possible criminal activity or are necessary for the exercise of the right to freedom of expression and the right to freedom of arts and sciences, provided that the fundamental rights of third parties, as well as intellectual property and copyright, are guaranteed for such purposes.'

4. How is non-personal data or information sharing/licensing regulated in your jurisdiction?

The following laws protect non-personal data in Mexico:

The Federal Copyright Law (Ley Federal del Derecho de Autor or LFDA) protects intellectual property rights over original works, including text, images, computer programs and databases. However, the LFDA is more oriented towards protecting intellectual property in terms of creative works and does not specifically focus on the protection of non-personal data. The law establishes the author's exclusive rights over their work and regulates how those works can be used and distributed, but does not directly address the regulation of non-personal data.

Likewise, as mentioned above, the Federal Consumer Protection Law (Ley Federal de Protección al Consumidor or LFPC) aims to protect the rights of consumers in regard to commercial transactions. While the LFPC can apply to situations where non-personal data is used in a manner that is misleading or harmful to consumers, its main focus is on regulating advertising, commercial practices and consumer protection in general, rather than the specific regulation of non-personal data.

As such both laws can be used to protect consumer rights, but in relation to non-personal data, the law in Mexico is very limited.



5. Are there any policies, strategies or regulations applicable to digital marketing in the metaverse in your jurisdiction? What sanctions (civil, criminal, administrative) can be applied? Is there any jurisprudence or are there any decisions by a regulator regarding infractions of the digital marketing rules in your jurisdiction?

As mentioned above, the LFPC is the law that regulates the relationship between suppliers and consumers, including in regard to advertising and commercial practices. The law specifically contemplates commerce that takes place by electronic means and, although the metaverse is not expressly mentioned in regard to the scope of the law, the law does apply to any commercial advertising carried out in the context of the metaverse.

As applicable to entities that advertise services and/or products in Mexico, such providers in the context of the metaverse have to comply with the following requirements when advertising products or services, or when providing information to consumers:

- all information and/or advertisements that are directed to consumers (including promotions and/or offers) must be truthful, ascertainable and exempt of any element that may induce consumers to make mistakes or become confused. Abusive or misleading publicity or information is prohibited. A lack of veracity in regard to any reports, instructions, data or promised or suggested conditions regarding products or services is strictly prohibited by law; and
- all information directed to Mexican consumers (terms and conditions, privacy policies, advertisements, etc) must be presented in Spanish language. All information on imported products must include its place of origin and any pricing information must be expressed in Mexican pesos in a comprehensible and legible manner, notwithstanding that additionally it may be expressed in another language or currency.

However, these obligations represent a great challenge for the Mexican authorities in charge of enforcing consumer rights in regard to enforcing these legal provisions, due to the extraterritoriality of the metaverse, which makes it difficult for such authorities to track the location of service providers and consumers for enforcement purposes.

The Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión or LFTR) regulates advertising in the form of electronic media and telecommunications. Since the proposed bills of law aimed at regulating AI and ML point towards the Federal Telecommunications (Instituto Federal de Telecomunicaciones or IFT) to be the pillar of enforcement in this regard, it may very well gain prominence in connection with the enforcement of rights in the metaverse in the years to come.

The General Health Law (Ley General de la Salud or LGS) regulates the advertising and provision of information on health-related products, services and medicines.

The Federal Law on Economic Competition (Ley Federal de Competencia Económica or LFCE) regulates competition and unfair commercial practices.

These laws and regulations provide a legal framework for digital marketing in Mexico and establish certain criteria and requirements that companies and advertisers must comply with when conducting marketing and advertising activities; hence, these laws would be applicable for the same purposes to the relevant activities in the metaverse.

The specific sanctions that can be applied in the field of digital marketing in Mexico vary depending on the nature and seriousness of the infringement, as well as the specific piece of legislation that has been violated. The possible sanctions may include monetary fines; temporary or permanent disqualification in serious cases of infringement; temporary or permanent suspension of certain marketing activities or even banning the offending company or individual from engaging in certain commercial activities; withdrawal of the advertising in situations where certain infringing advertising is being shown to consumers (the authorities may order the withdrawal or modification of advertising that is considered misleading, false or contrary to the law); prohibition of certain practices, such as the prohibition of certain commercial or marketing practices that are considered unfair, misleading or contrary to consumer rights; civil and criminal liability; in addition to administrative sanctions. Companies or individuals found responsible for such infringements may face civil and criminal liability for damages caused to consumers or third parties, as a result of unlawful commercial practices.

Q 6. What challenges exist in your jurisdiction in regards to the protection of information and the enforcement of rights in the context of the metaverse?

Certainly, Mexico counts on a robust set of laws aimed at protecting various sorts of information, personal and non-personal, in the digital environment, which by interacting with one another, and along with the presence of regulations contained in international treaties signed by Mexico, establish a basic legal framework for the protection of these different types of information.

Nevertheless, the two main challenges observed in Mexico in connection with the protection of information and relating to the enforcement of rights more generally in the context of metaverse are: the significant delay observed in the updating of many of these laws and regulations in order to meet current international standards and the need for better infrastructure and training for the various Mexican administrative agencies and authorities in charge of the enforcement of the laws referred to in this article, especially in the field of international cooperation, which is a must in order to stop infringements taking place in digital environments and the metaverse, which by their very nature lack all types of boundaries found in the real world.