

Metaverse

Ausgewählte rechtliche Aspekte

ISSS Zürcher Tagung – Metaverse vom 4. Juli 2023

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Einführung

Metaverse als rechtliches "Neuland"?

- Metaverse ist **kein rechtsfreier Raum**, aber ein neuer Kommunikationsraum
- Wer kontrolliert das Metaverse?
 - Grosse, weltweit tätige Unternehmen
- **Analogie Fall Uber**
 - BGer 2022: FahrerInnen sind Arbeitnehmer → Löhne und Sozialabgaben
 - Späte Reaktion
 - Rechtzeitige Regelung/Klarheit wünschenswert

Gerichtsstand und anwendbares Recht

- **Gerichtsstand** und **anwendbares Recht**?
 - Muss grundsätzlich im **Einzelfall** entschieden werden
- **Teilweise frei** von Parteien **wählbar**
- Allerdings **gewisse zwingende Normen**, um bspw. Arbeitnehmer oder Konsumenten zu schützen
- **Strafrecht** besonders restriktiv in der Anwendbarkeit bei internationalen Verhältnissen
 - Teilweise mehrere Anknüpfungspunkte, bei welchen Verfolgung am praktikableren Ort wahrgenommen wird
- Besonders relevant: **AGB der Plattformanbieter**

AGB von verschiedenen "Metaverses"

Anwendbares Recht und Gerichtstand (1/2)

Decentraland: If the parties do not reach an agreed upon solution [...] then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below.

- ICC als Schiedsgericht eingesetzt (Schiedsort: Panama City)
- "Applicable law"?

Sandbox: [...] governed by the laws of Malta, [...] proceedings only in the courts of Malta and no other courts, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding.

Anwendbares Recht und Gerichtstand (2/2)

OpenSea: You agree that any dispute, [...] will be resolved by **binding arbitration** [...].

You and OpenSea hereby waive any constitutional and statutory rights to sue in court and have a trial in front of a judge or a jury. [...]

These terms and your access to and use of the service shall be governed by and construed and enforced in accordance with the laws of the State of New York [...].

Axie Infinity: [...] laws of the Cayman Islands, as applicable to agreements made and to be entirely performed in the Cayman Islands,[...].

Wie Decentraland erst "informal negotiations" und anschliessend "binding arbitration". Hier allerdings nach den Commercial Arbitration Rules of the American Arbitration Association.

If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted in the state and federal courts located in the Cayman Islands, sitting in Grand Cayman [...].

IP-Rechte (1/2)

Decentraland: All title, ownership and Intellectual Property Rights in and to the Site and the Tools are owned exclusively by the Foundation or its licensors.

[...]

All title, ownership and Intellectual Property Rights over the Content created by users belongs to the users who created said Content. Neither the Foundation nor the DAO have any Intellectual Property Rights over the user's Content.

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[...]

If you purchase an Asset in The Sandbox, please be aware that the creator of the Asset retains copyright to the Asset, [...].

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[...]

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"Shut down" des Metaverses (1/2)

Decentraland: The DAO may decide to terminate or suspend all or part of the Site and the Tools and your access to the Site and the Tools immediately, without prior notice or liability. You will not receive any refunds if you cancel your Account, or if these Terms are otherwise terminated. [...] DAO and/or the Foundation (and its officers and employees) will not be liable to you or to any third party for any such suspension.

Sandbox: At any time and without notice, TSB reserves the right to modify or stop offering all or part of the Services. [...]; provided, however, that you will remain the owner of your Assets and Games in accordance with these Terms.

"Shut down" des Metaverses (2/2)

OpenSea: [...] with or without notice and in our sole discretion, to suspend, restrict, disable, terminate, [...] at any time and for any or no reason, and you acknowledge and agree that we shall have no liability or obligation to you in such event and that you will not be entitled to a refund of any amounts that you have already paid to us. [...]

Axie Infinity: [...] our sole discretion and without notice or liability, terminate this agreement and/or deny access to and use of the services (including blocking certain IP addresses) to any person for any reason or for no reason, [...] We may terminate your use of or participation in the services or delete your account without warning, in our sole discretion.

AltspaceVR macht am 10. März 2023 dicht



VON ANDRÉ WESTPHAL © JAN 22, 2023 | EIN KOMMENTAR

Microsoft-Entlassungen: Metaverse ist gestrichen

Das Metaverse von AltspaceVR wird im März komplett geschlossen. Große Nutzerzahlen hat das Projekt nie gesehen – es wurde zu keinem Zeitpunkt von mehr als 740 Nutzern gleichzeitig besucht.

Von **Kay Nordenbrock**

23.01.2023, 14:05 Uhr • 2 Min. Lesezeit

Microsoft killt AltspaceVR und damit ein Stück VR-Historie

20.01.2023 Matthias Bastian   

There was no gloating at the grave, but tweets from [Somnium Space](#), [Spatial](#), and [Mona](#) invited displaced worldbuilders to take their events and spaces along. While this may be an option for events and assets, it's not a meaningful option for users.

Im Fall von **AltspaceVR** war den Usern der "Shut down" vorher angekündigt worden und "Assets" konnten abgezogen werden. Viele AGB sehen eine solche Pflicht der Ankündigung und der "Umzugsfrist" allerdings nicht vor. **Wie sicher darf man sein?**



Strafrecht im Metaverse?

Cyberkriminalität im Vordergrund (1/2)

- **Cyber-Mobbing** und **Belästigung** im Metaverse können strafrechtliche Konsequenzen haben
- Die Verwendung von **Hacking-Techniken im Metaverse**, um unerlaubten **Zugriff auf Systeme oder Daten** zu erlangen, rückt in den Vordergrund
- **Betrugsmaschen** und **Phishing** werden auf neuen "Spielflächen" zum Problem

Übereinkommen über die Cyberkriminalität¹

Abgeschlossen in Budapest am 23. November 2001

Von der Bundesversammlung genehmigt am 18. März 2011²

Schweizerische Ratifikationsurkunde hinterlegt am 21. September 2011

In Kraft getreten für die Schweiz am 1. Januar 2012

Cyberkriminalität im Vordergrund (2/2)



ABER: Fraglich kann sein, **welche Jurisdiktion** bei grenzüberschreitenden Delikten gilt
Anknüpfung an verschiedene Punkte möglich, welche auch betr. Praktikabilität geprüft werden müssen:

- Wo wirkt sich die Straftat aus?
- Wo stehen Server mit potenziellen Beweismitteln?
- Wie sieht die internationale Zusammenarbeit aus?

Ihr Kontakt



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