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AVATAR ASSAULT IN METAVERSE

Avatar Assault in Metaverse: A Global Perspective ¹

Most contemporary understandings of the Metaverse(s) describe it as a parallel virtual reality (VR) experience, which is abundant with features from our physical world such as streets, buildings, and even other virtual humans. While the Metaverse is a significant use case of technology based on the blockchain such as cryptocurrency and NFTs, and holds immense potential to re-shape and re-imagine virtual spaces, unfortunately, crime and mischief have already found their way in. This is coupled with numerous reported instances of virtual sexual assault. With advances in VR technology, the more realistic the Metaverse becomes, the more real such virtual assaults will also feel.² As the Metaverse gains more popularity, the problem is likely to be exacerbated further, and will require regulators to grapple with some important questions.

“Virtual assault” (whether sexual or otherwise) is an issue which would only increase in the Metaverse, given the realistic experience that the Metaverse provides to its users. For instance, what if, while walking on the streets of a virtual world, a group of virtual personas or “Avatars” assault you with virtual objects lying around? Until full-body sensors / machine nodes are used, there may not be any physical impact of such an assault, but the mental impact could be very much real (even more so in the case of virtual sexual assaults).

On the architectural level, Metaverses may be developed such that violent interactions are not possible by design or through on-demand safety features.³ However, such measures may not be highly effective given that these would (i) be completely dependent on private entities such as the developers / producers of the Metaverse, (ii) require platforms to weigh user safety against limitations on interactions between users, and / or (iii) shift the onus on users to act mindfully during such incidents.⁴

The platform may also, through its terms of use, prohibit certain behavior, but breach of such terms would largely lead to contractual liability. Platforms may not pursue individual Avatars given the costs and practical challenges involved, and the possibility of multiple accounts.

As a result, it is important to assess whether users can seek protection under any statutory law, as opposed to being dependent on the actions of commercial actors. Traditionally, however, penal legislations generally envisage assaults to be in the physical context.



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² For e.g., see <https://www.wired.com/story/crime-metaverse-virtual-reality/> (Last visited on June 28, 2022).

³ For e.g., Meta has announced a “Personal Boundary” feature which stops other users from coming in close contact - <https://www.verdict.co.uk/metaverse-meta-sexual-assault/> (Last visited on June 28, 2022).

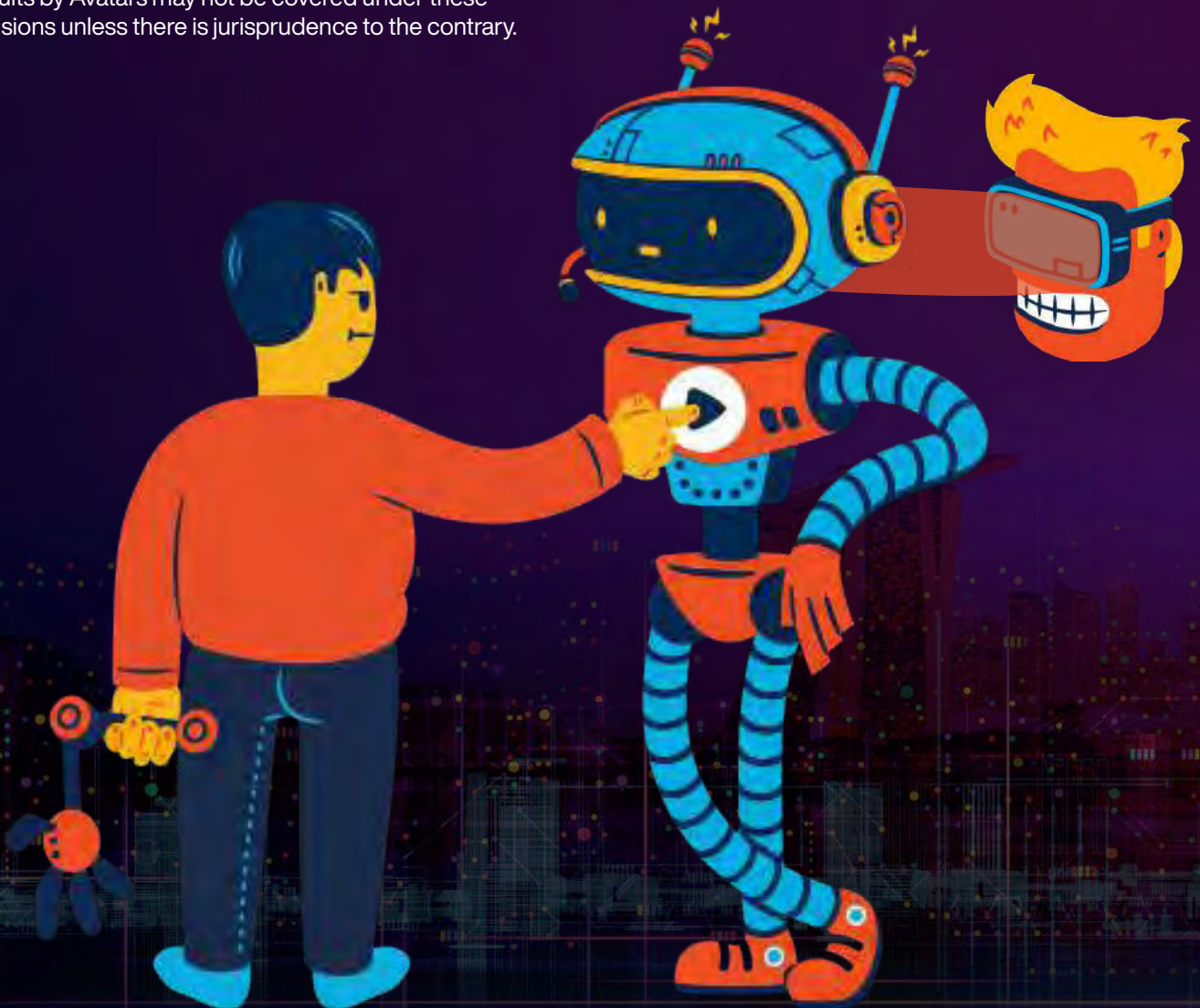
⁴ For e.g., Meta’s current safety measures include the ability to mute / block people or to transfer one’s avatar to a “safe zone”, which may be effective, but depend on the user themselves to take affirmative actions at the time of such incidents to ensure their own safety (see <https://www.nbcnews.com/tech/internet/metaverse-virtual-worlds-lack-adequate-safety-precautions-critics-say-rcna15418>) (Last visited on June 28, 2022).

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For instance, under the Singapore Penal Code, 1871 and the Indian Penal Code, 1860 which are the criminal codes of Singapore and India, respectively, the definition of “person” appears to be an inclusive definition and not limited to natural persons. Although, whether an Avatar in itself can be categorized as a “person” continues to be contentious. Similarly, the definition of “hurt” under both these legislations means bodily pain, disease or infirmity which again may be difficult to attribute to an Avatar. Even for the offence of rape, penal statutes mostly refer to the use of or the effect on physical parts of the body. Other sexual crimes pose the same problem, thus making an offence attributable to an Avatar even more contentious.

The key takeaway is that different offences pertaining to assaults under criminal statutes may have different requirements, whether it is of physical acts, physical injury, or the involvement of a natural person. Unless the offence is not perpetrator and victim-neutral, and does not require bodily injury as a pre-requisite to the offence, assaults by Avatars may not be covered under these provisions unless there is jurisprudence to the contrary.

Interestingly, however, when it comes to sexual harassment (which may not necessarily involve assault), certain statutes contain specific provisions which penalize online sexual harassment and stalking. However, under Indian law the provisions largely relate to a “man” as a perpetrator, and some provisions require a “woman” to be a victim of such an offence. The term “man” and “woman” refer to natural persons, and thus, Avatars may not strictly fall under the said categorization. However, it can be argued that the actions of an Avatar are in fact the actions of the human controlling such an Avatar, and accordingly, the human player should be liable.



It is also helpful to look at a few other jurisdictions so as to understand how statutes are worded, and whether virtual assault by Avatars could be considered as an offence under such laws. As an example, under the penal laws of New York, physical injury is a necessary element for the offence of assault to be triggered (regardless of degree).⁵ Similarly, the offence of menacing requires the offender to place the victim in reasonable fear of “physical injury, serious physical injury or death”.⁶ With respect to sexual offences as well, Article 130 of the New York penal law defines sexual conduct (including sexual contact) such that it prima facie appears to require physical actions. The wording of the offence of “forcible touching” also refers to “touch” or subjecting another person to “sexual contact”, both of which would involve physical contact.



As a contrary example, under the Communications Act, 2003 of the UK, Section 127⁷ penalizes “improper use of public electronic communications network”. Under this section, a person is guilty of an offence if he “(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or (b) causes any such message or matter to be so sent.” This provision, if read broadly, could attribute liability of an Avatar to a natural person who is sending the message or matter in question.

Hence, statutory provisions in various jurisdictions follow approaches which may differ from each other. As more users spend an increasing amount of time on the Metaverse, the case for user protection from crimes on the Metaverse will only increase. Some of the approaches that regulators may consider are: (i) Relying on the market and self-regulation by platforms; (ii) Expanding interpretation of existing laws: For e.g., there is a strong argument to be made that virtual assault could result in bodily harm, if it leads to demonstrable mental injury; (iii) Amendments to laws / fresh legislation, such that offences in the Metaverse could be specifically called out, and / or there could be an obligation on Metaverse platforms to ensure user safety; and (iv) As a more radical approach, legal personhood for Avatars could be considered for the limited purpose of recognizing harms caused and imposing punishments for actions in a virtual space.

Each of the above approaches would depend both on the existing framework in a jurisdiction, as well as the nature of legal uncertainties that the Metaverse throws up. Whichever approach is finally decided upon, there ought to be a multidisciplinary and consultative approach taken by the regulator based on statistical data as well as practicalities in mind.

While the Metaverse is set to be the next big thing, user safety within the Metaverse should certainly not take the back seat. Current laws do appear to be inadequate, and finding solutions in law which are efficient, implementable and acceptable is critical.

Nishith Desai Associates will be hosting a Masterclass on July 28, 2022 at 9am SGT at 80RR Fintech Hub SG to discuss regulatory issues, governance and reformation pertaining to the Meta-Verse and Fin-Verse where we will have renowned and industry-expert panelists delve into some of the issues as mentioned above and many more. Do join us for it, and also pop-by Booth E/26 during the conference for a chat.

⁵ Penal (PEN) CHAPTER 40, PART 3, TITLE H, ARTICLE 120 (available at: <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>) (Last visited on June 28, 2022); Given that each state in the United States has its own criminal code, we have taken the State of New York as an example.

⁶ Id.

⁷ Available at: <https://www.legislation.gov.uk/ukpga/2003/21/section/127> (Last visited on June 28, 2022).