

Unreal Estate: Is There Really “Land in the Metaverse”?

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Among the hottest of today’s technology topics is “real estate in the metaverse.” This is not the first time this topic has generated significant interest; twenty years ago a flurry of economic and scholarly activity also bloomed.¹ As was true back then, the concept still invokes difficult legal and philosophical questions. The answers to some of those questions may depend on technology-business outcomes that cannot yet be reasonably foreseen. Others may be unanswerable metaphysical quandaries.

The purpose of this piece is therefore not to give definitive answers. Rather, it is to begin the Innovation & Practice Committee’s practitioner-focused discussion about what legal approaches may (and may not) apply to the idea of “real estate in the metaverse.” For purposes of brevity, I will simply call that concept “virtual land” from this point forward, because we must first break down the phrase into its component parts: what is “the metaverse,” and can such a thing have “real estate” in it?

As I discuss below, once we understand exactly what “the metaverse” really is, our existing dirt law frames of reference seem like a poor fit for what technologists have in mind. In particular, a cornerstone of Anglo-American real property law—*all real estate is unique and nonfungible*²—does not readily seem to square with the idea of “virtual land.”

What Is “The Metaverse”?

To properly analyze the concept of virtual land, we must first understand the origins of “the metaverse.” In one of the more bizarre career twists for us lawyers, this requires not *legal* research, but rather an in-depth understanding of science fiction. This is so because the business that today’s tech entrepreneurs are trying to build is a virtual world that has been collectively

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¹ See, e.g., F. Gregory Lastowka & Dan Hunter, *The Laws of Virtual Worlds*, 92 CAL. L. REV. 1 (2004).

² See, e.g., Shelly Cavalieri, *Back to the Basics: Lessons from U.S. Property Law for Land Reform*, 95 DENV. L. REV. 73 (unpaginated article in Lexis) (“Notions of property have long reflected this fundamental nature of land as different from other kinds of property because no two acres, or even lots, are identical; American property law has evolved to embrace this presumption.”); Restatement (Second) of Contracts § 360 cmt. e (Am. L. Inst. 1981) (“A specific tract of land has long been regarded as unique and impossible of duplication by the use of any amount of money.”). Yes, there are occasions for questioning this principle on some fact patterns. But these exceptions do not gainsay the general rule.

ideated through canonical works of “geek culture” whose influence on those tech entrepreneurs’ adolescent and early-adult years runs deep.³

Among the earliest outlines of the metaverse in popular culture can be traced to *Neuromancer*, a classic 1984 novel by William Gibson. In *Neuromancer*, “cyberspace” is described as:

A consensual hallucination experienced daily by billions of legitimate operators, in every nation A graphic representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity.⁴

In *Neuromancer*, “console cowboys” such as the protagonist Case “jack in” to cyberspace through a series of human-computer interfaces that are vaguely described, but which can have overtones of being cyborg-type implants.⁵ As a result, Case can essentially place his consciousness into a highly-immersive virtual reality that is as “real” to him as anything in the physical realm.⁶ The influence of *Neuromancer* on later works such as *The Matrix* (1999) is apparent.

The first pop-culture use of the term “metaverse” is generally credited to Neal Stephenson’s famous 1992 sci-fi novel *Snow Crash*. In this work, the Protagonist⁷ and other characters spend much of their time in a similar virtual reality:

So Hiro’s not actually here at all. He’s in a computer-generated universe that his computer is drawing onto his goggles and pumping into his earphones. In the lingo, this imaginary place is known as the Metaverse. Hiro spends a lot of time in the Metaverse. It beats the [heck] out of the U-Stor-It [where he lives].⁸

Notably, the human-computer interface methods in *Snow Crash* are more pedestrian than the seemingly cyborgian means referenced in *Neuromancer*. As can be seen from the excerpt above, “the Metaverse” of *Snow Crash* relies on its users donning “wearable” technology that bears an uncanny resemblance to today’s “virtual reality” goggles.⁹ It is not a stretch to say that much of

³ See, e.g., David Karpf, *Never Stop Failing Up*, WIRED, Nov. 2021, at 18-19 (“For the Gen X and millennial tech entrepreneurs who dominate Silicon Valley today, the sci-fi of their youth always treated VR as an ambient part of the future technological landscape.”) And being of that same cohort as many of these technologists, so now my life comes full-circle, back to carting my Pentium desktop rig to multiplayer *Warcraft* LAN parties in high school. The geeks truly have taken over the world, and in this piece I will embrace the whole of my own geekiness.

⁴ WILLIAM GIBSON, *NEUROMANCER* 57 (2018 ed.).

⁵ *Id.* at 57-58 (“[C]areful not to disturb the flat Sendai dermatrodes He closed his eyes. Found the ridged face of the power stud And in the bloodlit dark behind his eyes, silver phosphenes boiling in from the edge of space And [it] flowed, flowered for him, fluid neon origami trick, the unfolding of his distanceless home Inner eye opening And somewhere he was laughing, in a white-painted loft, distant fingers caressing the deck, tears of release streaking his face.”)

⁶ See *id.* at 5-6 (“He’d operated on an almost permanent adrenaline high . . . jacked into a custom cyberspace deck that projected his disembodied consciousness into the consensual hallucination that was the matrix.”)

⁷ Yes, his name is Hiro Protagonist, with the first name being a fairly obvious play on “Hero.” See NEAL STEPHENSON, *SNOW CRASH* 22 (2017 ed.). The concept of the main character’s name being Protagonist is replicated in the recent Christopher Nolan sci-fi movie *TENET* (Warner Bros. 2020).

⁸ STEPHENSON, *supra* n.7, at 29.

⁹ See, e.g., Oculus Quest 2, <https://www.oculus.com/gear-vr/> (last visited 27 July 2022).

what technologists are now attempting to create and market is taken directly from the pages of *Snow Crash*.

A third important cultural touchstone comes from the 2011 novel *Ready Player One*. Among the earliest pieces of the current zeitgeist lionizing the culture of 1980s America,¹⁰ *Ready Player One*'s hero Wade Watts is a participant in a worldwide, immersive video game contest based entirely on 1980s nostalgia, in which the winner will inherit the unequalled fortune of the game's primary creator. The game itself is called "OASIS," and is played through wearable human-machine interface devices that again presage today's "virtual reality" products:

The keys to the success of the OASIS were two new pieces of interface hardware that GSS [the game founders' company] had created, both of which were required to access the simulation: the OASIS visor and haptic gloves.

The wireless one-size-fits-all OASIS visor was slightly larger than a pair of sunglasses. It used harmless low-light lasers to draw the stunningly real environment of the OASIS right onto its wearer's retinas, completely immersing their entire field of vision in the online world [T]he lightweight OASIS haptic gloves . . . allowed users to directly control the hands of their avatar and to interact with their simulated environment as if they were actually inside it. When you picked up objects, opened doors, or operated vehicles, the haptic gloves made you *feel* these nonexistent objects and surfaces as if they were really right there in front of you.¹¹

Beyond sci-fi novels and movies, a variety of video games also have significant influence over the concept of the metaverse. Among them: *Unreal* (1998), *Second Life* (2003), and *World of Warcraft* (2004). Indeed, the first of these (*Unreal*) has long outlasted the actual video game itself by serving as the origin of the "Unreal Engine," a computer graphics-rendering protocol that has reached its fifth generation, and which may well be poised to serve as the graphical foundation of upcoming metaverse technology.¹² In this tongue-in-cheek sense, we may soon be able to speak of "Unreal estate in the metaverse."¹³

The point of this literature review is to underscore that just about everything involving "the Metaverse"—from what it is to how one accesses it—was born from sci-fi. Therefore, reviewing how that same sci-fi canon describes and treats "real estate in the Metaverse" seems an apt guide for what technologists will be trying to create (and what their lawyers will be trying to handle).

¹⁰ See also, e.g., STRANGER THINGS on Netflix.

¹¹ ERNEST CLINE, *READY PLAYER ONE* 58 (2011 ed.).

¹² E.g., Scott Stein, *Epic Wants to Use its New Unreal Engine 5 to Open Up Gaming's Metaverse*, CNET (Apr. 5, 2022), <https://www.cnet.com/tech/gaming/epic-wants-to-use-its-new-unreal-engine-5-to-open-up-gamings-metaverse/> (last visited 27 July 2022).

¹³ Alas, I regret that I cannot claim credit for inventing this clever term. Instead, see Julian Dibbell, *The Unreal Estate Boom*, WIRED, Jan. 2003, at 106.

To that end, *Snow Crash* describes the creation and development of virtual land along its global-equator-long “Street”¹⁴ thusly:

Like any place in Reality, the Street is subject to development. Developers can build their own small streets feeding off of the main one. They can build buildings, parks, signs, as well as things that do not exist in Reality In order to place things on the Street, [developers] have had to get approval from the Global Multimedia Protocol Group, have had to buy frontage on the Street, get zoning approval, obtain permits, bribe inspectors, the whole bit.¹⁵

Similarly, *Ready Player One* offers the following vision of virtual land:

Any business that wanted to set up shop inside the OASIS had to rent or purchase virtual real estate (which [the game’s co-founder] dubbed ‘surreal estate’) from [Gregarious Simulation Systems, the game founders’ company]. Anticipating this, the company had set aside Sector One as the simulation’s designated business zone and began to sell and rent millions of blocks of surreal estate there. City-sized shopping malls were erected in the blink of an eye, and storefronts spread across planets like time-lapse footage of mold devouring an orange. Urban development had never been so easy.¹⁶

Will it truly be so easy, now that “The Metaverse” is allegedly near at hand? I doubt it. Although sci-fi has woven the dream that today’s technologists are working feverishly to create, there is a critical distinction between that sci-fi dream and the practical reality:

There is no such thing as “The Metaverse,”
with an honorific “the” and a capital “M.”

Instead, what exists at present are a variety of different metaverses being hawked by different companies hoping to become the platform that dominates virtual reality, like the world-conquering company GSS in *Ready Player One*. As *Wired* writes, “[N]early everyone describes it as *the* metaverse—when the reality is that there is no singular metaverse in the sense that we talk about ‘*the* internet.’”¹⁷

It is noteworthy that technology evangelists seem quick to reach for an honorific “the” to attach importance and inevitability to their ideas. Beyond “*the* internet,” see also the idea of “*the* blockchain.” As I have previously argued to the College,¹⁸ there is no such thing as “*the*

¹⁴ STEPHENSON, *supra* n.7, at 30 (“The Street seems to be a grand boulevard going all the way around the equator of a black sphere with a radius of a bit more than ten thousand kilometers . . . which is considerably bigger than Earth.”).

¹⁵ *Id.* at 30-31.

¹⁶ CLINE, *supra* n.11, at 59.

¹⁷ Eric Ravenscraft, *The Metaverse Land Rush is an Illusion*, WIRED, Dec. 26, 2021, available at <https://www.wired.com/story/metaverse-land-rush-illusion/> (last visited 28 July 2022).

¹⁸ Alex Cole, Michael Hamilton, & Justin Lischak Earley, “Blockchain, Smockchain,” ACREL Spring 2019 Conference, Palm Springs, California.

blockchain.” Rather, there are many different blockchains, comprised of several different programming languages, few of which are actually interoperable with one another.

So also with “the metaverse.” To quote again from *Wired*, “the idea of a *Ready Player One*-like single unified place called ‘the metaverse’ is still largely impossible. That is in part because such a world requires companies to cooperate in a way that simply isn’t profitable or desirable [for them].”¹⁹ Each of the companies hoping to create “The Metaverse” is instead competing with one another, hoping to become the real-world GSS, building a captive “walled garden” that is wholly under their control and from which their users never leave.

This insight—*there is no such thing as The Metaverse*—has significant implications for the concept of virtual land.

The Uniqueness Problem

From a business perspective, because there is no such thing as “The Metaverse,” but rather many competing metaverses, people buying virtual land are effectively placing their chips on a roulette wheel of the classic “VHS or Beta” technology problem: If the platform they chose wins, they may indeed own the proverbial “virtual Times Square,” and become insanely rich. But if the platform they chose loses, their investment may well be left worthless. As *Wired* again puts it:

In other words, buying ‘real estate’ on these platforms is like buying property in Manhattan, but in a world where anyone could feasibly create an infinite amount of alternative Manhattans that are just as easy to get to. Which means the only reason for users to buy into *this* Manhattan is if it offers a better service than the others.²⁰

In this way, the current state of “virtual land in the metaverse” is much more “Web 2.0”²¹ than “Web 3.0.”²² Each of *Ready Player One* and *Snow Crash* anticipated this, with their dominant platforms gobbling up all of humanity’s collective headspace.²³

But more fundamentally for us real estate lawyers, the fact there is no One Metaverse to Rule Them All raises a legal point: A core tenet of Anglo-American real estate law is that *every single piece of physical real estate is unique*. As a general matter, there is no legally “fungible” piece of

¹⁹ Eric Ravenscraft, *What is the Metaverse, Exactly?*, WIRED, Apr. 25, 2022, available at <https://www.wired.com/story/what-is-the-metaverse/> (last visited 28 July 2022).

²⁰ Ravenscraft, *The Metaverse Land Rush is an Illusion*, *supra* n.17.

²¹ The second age of the internet, characterized by monopolistic dominant platforms such as Facebook and Google. *See, e.g.*, WIKIPEDIA, *Web 2.0*, https://en.wikipedia.org/wiki/Web_2.0 (last visited 28 July 2022).

²² A hoped-for third age of the internet characterized by a general democratization and diffusion of ownership and control, typically envisioned through blockchain technology. *See, e.g.*, WIKIPEDIA, *Web3*, <https://en.wikipedia.org/wiki/Web3> (last visited 28 July 2022).

²³ *See, e.g.*, STEPHENSON, *supra* n.7 at 59 (“At a time of drastic social and cultural upheaval, when most of the world’s population longed for an escape from reality, the OASIS provided it, in a form that was cheap, legal, safe, and not (medically proven to be) addictive.”)

real property. This is why specific performance can be available as a breach of contract remedy in real estate sales contracts.²⁴

To put a finer point on it, I submit that physical real estate is nonfungible because it exists in Reality, and there is only one Reality, in which all of us living humans currently reside. While philosophers may justifiably argue this point, for us dirt lawyers, stipulating the existence of one Reality is a practical necessity: the legal nonfungibility of physical real estate derives from the fact that physical dirt is *metaphysically* unique in Reality.²⁵ If a court rules that I don't own Manhattan Island, I can't simply change the channel to a different reality and, *voilà!*, create an identical Manhattan Island that I *do* own. The foundational laws of the universe forbid it.

By contrast, I submit that virtual land is not the same. Consider a hypothetical piece of virtual land, which we'll call "Bitacre." Bitacre exists in the Acme metaverse, and in the Acme metaverse, there is no other piece of virtual land like it. It is unique and nonfungible in that sense. But log out of the Acme metaverse and log in to the Little Giant metaverse, and you will find "Byteacre," which is identical in all human-perceptible respects to Bitacre, save that Byteacre exists in a separate metaverse.

In other words, even if a particular piece of virtual land in *a* particular metaverse may be unique in *that* particular metaverse, a competing and indistinguishable piece of virtual land can *technologically* be replicated an infinite number of times in an infinite number of different metaverses. The only question will be which metaverse a critical mass of human users deem to be the "best" one, such that it obtains a network growth effect and dominates its competitors.

The reader may be thinking, "Wait! Copying someone else's computer program is an intellectual property violation." Which is my point—the touchstone for what seems likely to govern virtual land is probably not real property law in its current form. Again borrowing from *Wired*:

The use of real estate terminology is ill-fitting. Legal concepts about real estate do not readily transfer to infinitely replicable virtual reality worlds. Use of this terminology is largely marketing: 'People need to kind of have a narrative behind it. Because at the end of the day, you're just buying numbers in a computer,' [Stephen Diehl] said. 'The story that you're buying something in a new high-rise or a building is largely kind of [B.S.]'²⁶

Notably, this is not the same as debating whether or not virtual land is "property." The scholarship of twenty years ago largely seems to conclude that it is, or at least it should be.²⁷ Commentators of the time railed against end-user license agreements ("EULAs"),

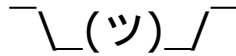
²⁴ *Supra* n.2.

²⁵ It's worth noting that if we are actually living in a Matrix-like simulation rather than in Reality, for those inside that simulation and without ability to escape it, the "virtual land" in that simulation would be indistinguishable from physical real estate in Reality. But again, this is an avenue of pursuit for philosophers, not dirt lawyers.

²⁶ Ravenscraft, *The Metaverse Land Rush is an Illusion*, *supra* n.17.

²⁷ See, e.g., Ryan Vacca, *Viewing Virtual Property Ownership Through the Lens of Innovation*, 76 TENN. L. REV. 33, 34-35 (2008) ("Over the past several years, many scholars have wrestled with the idea of how property rights for items created in virtual worlds should be conceptualized. . . . [M]ost, if not all, commentators agree that the law *ought* to recognize virtual property as property and vest *someone* with those rights." (emphasis supplied)).

often “click-through” contracts that no one actually reads, which generally deprive users of any property rights in the virtual things inside virtual realities.²⁸ These commentators offered legal theories by which the EULA terms could or should be avoided. But as to exactly how a *practitioner* should handle the property thereby purportedly recognized?



My point is that, even assuming that virtual land is property, it’s hard to call it *real* property, and to apply real property approaches to it: If I want to transfer Bitacre from Smith to Bonds, does that transfer occur by deed? In what records do I file the deed to give constructive notice to other platform users? Which state’s law applies to the form of deed? Do I need witnesses or a notary? Etc. Whatever the answers to these questions may be, existing real property law does not seem to provide them.²⁹

Conclusion

In this sense, I submit that virtual land suffers from a “uniqueness problem” that makes it hard to utilize traditional real property approaches. Real property law does not readily apply to things that are not fixed in spacetime and metaphysically nonfungible in the One True Reality. Although the uniqueness problem is a major challenge in applying real estate law practices to virtual land, it is not the only challenge. Others that merit exploration include:

- The Exclusion Problem: For physical real estate, the *owner* of the property has the right to exclude others. This is one of the core sticks in the proverbial “bundle of rights” that we all learned as 1Ls. No superior power can take away this right unless it is the government, which must pay just compensation to the owner whose property rights have been taken.³⁰ By contrast, virtual land exists on platforms whose terms of service give the platform nearly limitless power over both the user’s access and the very existence of the virtual land itself.³¹ For virtual land, the true right to exclude seems to belong not to the

²⁸ *E.g.*, David P. Sheldon, Comment, *Claiming Ownership, but Getting Owned: Contractual Limitations on Asserting Property Interests in Virtual Goods*, 54 U.C.L.A. L. REV. 751, 773 (2007) (“Even if participants do try to protect their [hypothetical property] interests under the [EULA] contracts, they will find that the fora and remedies available to them under the contracts are limited almost to the point of uselessness.”).

²⁹ Two other thoughts merit brief mention here for more exploration later: First, given that virtual land “ownership” seems more like possession (with true ownership remaining in the metaverse platform owner), are landlord / tenant concepts a good conceptual hook for discussion? Or does the fact that typical landlords cannot generally destroy the underlying fee (“fee title must lie *somewhere*”) make that a poor analogy? Second, is condominium law a good conceptual hook for discussion? A condominium regime involves creating fee title to a “cube of air” out of whole cloth. And yet, condominium regimes are typically state statutory creations, and the cube of air being condominiumized lies in a part of the One True Reality within that state’s territorial jurisdiction. Whose laws have jurisdiction over the metaverse platform in question?

³⁰ *E.g.*, U.S. CONST., amend. V. (“nor shall private property be taken for public use, without just compensation”).

³¹ *See, e.g.*, Vacca, *supra* n.27, at 42 (“In general, allocation of property rights largely depends on the End-User License Agreements (EULAs) of each virtual world.”).

owner, but rather to the technology platform provider.³² “Owners” of virtual land can often have their virtual land taken from them at any time, without just compensation.³³ In this sense, the virtual land may be the possession of a particular user on that particular platform, but true “ownership” seems to belong to the platform itself.

- The Forced Transfer Problem: A core principle of real estate law is that a deed is not effective unless it is executed, delivered, *and* accepted.³⁴ This rule prevents property owners from foisting unwanted property and its associated liabilities (e.g., toxic waste dumps) onto unwitting others. But this is not necessarily so with virtual land. Many virtual land transfers now operate on the basis of non-fungible tokens (NFTs). A troubling problem with NFTs is that some can be transferred to a recipient *without the recipient’s consent*.³⁵ The unlucky recipient must “burn” the undesired NFT by transferring it to someone else (perhaps without *their* consent), or by setting up a “dummy” or “burner” wallet to take the NFT, which is then abandoned into limbo. Is virtual land really “real estate” if it can be foisted onto another without their consent?
- The Securities Problem: By itself, without more, a deed to fee title of physical real estate is *not* a security. However, by itself, without more, an NFT deed to virtual land *might* be a security.³⁶ Despite vigorous lobbying attempts by technology companies, it is hard not to see how the *Howey* test does not squarely apply to many NFTs. The Securities and Exchange Commission has strongly insinuated as much,³⁷ and the sales efforts of virtual land marketers are likely to invite continued securities-law scrutiny.³⁸ If merely receiving transfer of title to virtual land by itself implicates securities laws, then virtual land seems very unlike physical real estate.

³² E.g., Sheldon, *supra* n.28, at 765 (“The right to exclude . . . is the property right most severely curtailed by the EULAs. This has been called the most important stick in the bundle of property rights, but virtual-world providers do not give this right to the [world’s] participants.”).

³³ E.g., Paul Riley, *Litigating Second Life Land Disputes: A Consumer Protection Approach*, 19 FORD. INTEL. PROP., MEDIA & ENT. L.J. 877, 880 (2009) (“Linden can shut down Chung’s Second Life account and seize all of her virtual assets for any or no reason. Moreover, it can do so without paying her compensation.”)

³⁴ E.g., 14 POWELL ON REAL PROPERTY § 81A.04(2)(b) (“The mere delivery of a deed by the grantor is insufficient for an effective conveyance. The grantor cannot thrust the property onto the grantee against his or her will, even if the conveyance is gratuitous. To complete the transaction, the grantee must accept the conveyance.”)

³⁵ See, e.g., Morgan Linton, *Found a random NFT in your wallet? Interacting with it could be a big mistake*, MORGANLINTON.COM, Sept. 29, 2021, <https://www.morganlinton.com/found-a-random-nft-in-your-wallet-interacting-with-it-could-be-a-big-mistake/> (“So what should you do if a random NFT is airdropped to your account? The general advice is to leave it alone”)

³⁶ See, e.g., Clint Rainey, *Report: SEC has its eyes on NFTs, probing if some tokens are illegal securities*, FAST COMPANY, Mar. 4, 2022, <https://www.fastcompany.com/90727504/report-sec-has-its-eyes-on-nfts-probing-if-some-tokens-are-illegal-securities> (last visited 28 July 2022).

³⁷ See, e.g., Compl., *SEC v. Wahi*, No. 2:22-cv-1009, available at <https://www.sec.gov/litigation/complaints/2022/comp-pr2022-127.pdf> (last visited 28 July 2022) (alleging that certain crypto-tokens are securities under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)).

³⁸ See, e.g., Ravenscraft, *The Metaverse Land Rush is an Illusion*, *supra* n.17 (“Their target[s] are the tenuously middle class. People who feel the system squeezing them and feel their grip on solvency slipping away. Who feel the gig economy strangling them. And they’re pitching them with, ‘This is your chance,’ Olson said. ‘You just need to bet on the right coin. You just need to bet on the right meme at the right time. You just need to bet on the right ape, and you can cash out. You can escape.’”)

- The Cyberspace / Meatspace Problem: Physical real estate is subject to the jurisdiction of some judicial system. If a court having jurisdiction orders something to be done (or not done) to title of a physical piece of land, that thing will be done. But orders of courts in the real world—what technologists sometimes call “meatspace”³⁹—may not necessarily be cognizable or enforceable in cyberspace.⁴⁰ Suppose you feel that title to Bitacre was stolen from you, so you file a lawsuit in a court here in Reality, and win a judgment quieting title to Bitacre. The judge orders that Bitacre be returned to you, but the platform that runs the metaverse where Bitacre exists is headquartered in Ostracizandia, which has no diplomatic relations with the United States, and which does not recognize the judgments of U.S. courts. Or suppose the same fact pattern, but the platform running the metaverse is a distributed autonomous organization (DAO), which has no headquarters anywhere, and on which something can happen only if you convince 51% of the DAO members to agree with you. In these instances, a court order over Bitacre is unenforceable as a practical matter. Can something truly be “real estate” if it is effectively beyond the power of any real-world court? Indeed, as a group of early internet true-believers wrote in an open letter to world governments in 1996:

Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here.⁴¹

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These are hard questions, without obvious answers. And there are very likely other questions that this piece neglects to ask. That’s why in the coming months, the Innovation & Practice Committee will be focused on examining “real estate in the metaverse” from a practitioner’s perspective. If virtual land ultimately becomes *some* form of legally-recognized property,⁴² what kind of legal skills does a practitioner need to represent clients in this complex and fast-changing area? As an article from 2009 lamented,

Though the leading scholars on virtual property issues explain why and to what extent a court should protect virtual property . . . these commentators fail to address, as a practical matter, how, given the current state of both property and contract law, a court would go about finding a virtual property right.⁴³

³⁹ See, e.g., GIBSON, *supra* n.4, at 6 (“The body was meat. [Unable to access cyberspace,] Case fell into a prison of his own flesh.”)

⁴⁰ See, e.g., John Perry Barlow, *A Declaration of the Independence of Cyberspace*, Feb. 8, 1996, available at ELECTRONIC FRONTIER FOUNDATION, <https://www.eff.org/cyberspace-independence> (last visited 10 Aug. 2022) (“Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.”).

⁴¹ *Id.*

⁴² See, e.g., Vacca, *supra* n.27, at 34-35 (“Over the past several years, many scholars have wrestled with the idea of how property rights for items created in virtual worlds should be conceptualized. . . . [M]ost, if not all, commentators agree that the law *ought* to recognize virtual property as property and vest *someone* with those rights.” (emphasis supplied)).

⁴³ Riley, *supra* n.33, at 891.

Has anything changed in the ensuing years? What is the state of practice in this space, at the “increasingly porous barrier between the real world and the virtual world?”⁴⁴ Perhaps some readers have recent practice experience—and maybe it disagrees with the points I’ve made here?

Our journey into “the metaverse” will start at our committee meeting in Chicago on Friday, October 21st. We hope you’ll join us there, and at the other stops we’ll make throughout the next year!

⁴⁴ Sharon K. Lowry, Note & Comment, *Property Rights in Virtual Reality: All’s Fair in Life and Warcraft?*, 15 TEX. WESL. L. REV. 109, 111 (2008) (wondering, “[A]re virtual land and virtual chattels protected by real-world property law?”).