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Kick Off Metaverse Sports Ventures With Risk Evaluations

By **Richard Brand, Dan Jasnow and Anjelica Fuccillo** (October 17, 2022, 5:31 PM EDT)

Imagine having the capability to watch a Major League Baseball game through the eyes of the batter, stand on the sidelines next to your favorite player during the Super Bowl or watch each play of a game from different viewpoints in your own home. All of this, and so much more, is possible in the metaverse.

At its core, the metaverse is the next generation of the internet. Built largely on decentralized, blockchain technology instead of centralized servers, it consists of immersive, three-dimensional experiences with vibrant digital marketplaces, persistent and traceable digital assets, and a social component.

Early adopters of the metaverse must navigate a number of legal and technical challenges but may be rewarded with new revenue streams, valuable earned media, strengthened consumer engagement and a foothold in the next frontier of e-commerce.

Although some elements remain aspirational, many companies are working on next-generation and metaverse-specific products that they hope will obtain lucrative results. With its legions of passionate fans and deep roots in legacy and digital media, coupled with an established presence in blockchain markets, the sports industry is well-positioned to capitalize on these early opportunities.

Many leagues and franchises have already taken the plunge into the metaverse as a means to maximize fan engagement worldwide. For example:

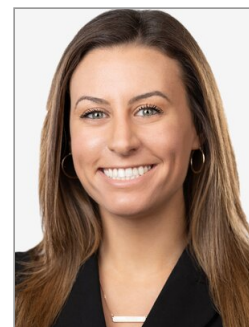
- In January, the Brooklyn Nets became one of the first professional sports teams to broadcast a live event in the metaverse after installing more than 100 high-resolution courtside cameras. The state-of-the-art cameras generate real-time, detailed 3D models and images of every player on the court and allow viewers to watch the game from any angle.
- The Atlanta Braves became the first MLB team to enter the metaverse on Feb. 15 with the release of a "digital twin" of their Truist Park.
- The Manchester City Football Club announced plans, also in February, to build a virtual reality replica of its stadium, Etihad Arena, where fans can watch live games.
- Niantic Inc., the video game developer behind PokemonGO, announced a partnership with the National Basketball Association in June to develop an original augmented reality mobile game that will allow fans to compete against today's NBA stars in their neighborhoods.



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Despite all the uncertainty about the future of the metaverse, there is little doubt that we will continue to see market players establishing footholds in the digital world for the foreseeable future.

As with every new frontier, technological or otherwise, it is important to properly evaluate the industry-specific risks and opportunities presented by the metaverse. We highlight a few below.

Broadcast and Sponsorship Rights

In recent years, broadcast and content licensing in the sports industry has grown increasingly fragmented. Regional sports networks have become major players; leagues have developed their own sophisticated media arms; and streaming platforms like Amazon Prime have acquired exclusive national broadcast rights for the first time.

The metaverse is likely to accelerate this trend. However, existing license agreements may not provide sufficient flexibility or otherwise address how to license metaverse-related rights; how to allocate those rights; and whether existing media partners have the necessary technology and know-how for metaverse-related applications.

Such deficiencies may require leagues, franchises, broadcasters and advertisers to go back to the drawing board, which may delay their entering into the metaverse.

Publicity Rights

As with anything related to sports, publicity rights are a critical consideration. A long string of cases in the U.S. has established that publicity rights extend to digital avatars, as well as to clearly identifiable digital likenesses and that exceeding the scope of any licensed uses will give rise to liability. Examples include:

- Hart v. Electronic Arts Inc., in which the U.S. Court of Appeals for the Third Circuit concluded in 2013 that the video game developers' use of National Collegiate Athletic Association football players' likenesses infringed on players' publicity rights under New Jersey law when use was not transformative; and
- No Doubt v. Activision Publishing Inc., in which the Court of Appeal of the State of California, Second Appellate concluded in 2011 that video game developers' use of No Doubt's likenesses infringed on the band's publicity rights under California law when use was not transformative.

Industry participants, as well as third-party developers, will therefore need to ensure that name, image and likeness agreements clearly convey rights for any proposed metaverse-related uses.

The decentralized nature of the metaverse and blockchain technology poses another challenge to protection and enforcement of publicity rights. Whereas publicity rights tend to vary from state to state, making jurisdiction critical to the strength of a claim, many metaverse platforms are operated by organizations located in off-shore jurisdictions that may or may not recognize publicity claims.

Moreover, it can be difficult, if not impossible, to identify the location of issuers or purchasers of infringing digital assets, further complicating any attempt to establish jurisdiction.

Privacy and Biometrics

With the proliferation of high-tech wearables, high-resolution cameras and live 3D broadcasts, franchises and venue operators will also need to consider the risk of over-collection of sensitive data, including biometrics.

Even in a sports venue where there is traditionally no reasonable expectation of privacy, sophisticated cameras that are capable of capturing biometric data such as facial geometry or voice recordings could push the limits of reasonable consumer expectations.

Before deploying such technology, industry participants should therefore make sure they have processes in place to protect fans' privacy and minimize data collection.

Advertising and Sponsorships

From naming rights and stadium signage to endorsement deals, sponsorships are integral to the sports industry. New digital arenas and metaverse broadcasts would seem to open new revenue opportunities for leagues and franchises.

But before selling the naming rights to or advertising in a digital arena, leagues and franchises will need to review their obligations under existing agreements with sponsors and consider whether previously sold rights carry over into the metaverse.

Similarly, digital replicas may give rise to liability for copyright or trademark liability. Before replicating the famous CITGO sign outside of Fenway Park, make sure you have the rights to any underlying copyrights and the CITGO trademark.

Ticketing and Royalties

Non-fungible token tickets will no doubt be a prominent offering in the metaverse given the commercial success leagues have already realized in this area.

For instance, the National Football League launched their own NFT trading platform in partnership with Ticketmaster Entertainment Inc. and has issued more than 500,000 collectible NFT ticket stubs.

This success can be contributed in no small part because they offer a solution to capturing royalties on secondary ticket sales. They may also offer a deterrent to counterfeit tickets.

But before transitioning your ticketing over to NFTs, it is important to understand the software dependencies that may make the difference between a seamless transition and catastrophe. Smart contract errors can not only undermine or prevent royalty collection, they can also trap your revenue in the blockchain.

Gambling and Fantasy

Gambling and fantasy gaming are already major features of the metaverse and, increasingly, of professional sports, so metaverse fantasy gaming and sports betting is clearly primed for growth, with NFT fantasy football game Sorare as a prime example.

To ensure compliance with national and local licensing requirements, however, sports industry participants and their gaming partners will need to determine how to implement the Know Your Customer procedures and geogating that are critical to compliance, but can be elusive in blockchain-based applications.

Metaverse development is moving fast and the sports industry has the ability to draw the everyday consumer into this immersive environment.

From a legal standpoint, existing laws and legal doctrines are often sufficient to properly assess risk, but thoughtful and informative planning is needed to minimize that risk in a novel technological ecosystem, while maximizing the value of the metaverse for your brand and consumers.

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