

# CATCHING UP

Why the Law Is Lagging Behind the Metaverse



# Who the Hell Are You?

## Suzanne Meehle, Esq.

- Managing Partner of Meehle & Jay P.A., Orlando FL
- 15 years - business & IP lawyer
- Practice focus on tech law, esp. health care IT, robotics, and software
- 12 years - prior career as a systems engineer
- Worked on healthcare IT, systems automation, data warehouses

## Meehle & Jay P.A.

- Business & Entertainment Law
- Seriously geek out reading Terms of Use, Privacy Policies, and Software Licenses



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# The Metaverse Doesn't Exist, Legally Speaking

“Actually, we’re not there yet, or even close. Defined loosely, the metaverse is an all-digital layer of reality that floats above, around, and throughout the features of the real world—or, in some definitions, is entirely separate from it.”

- Mark Sullivan, *FastCompany*, Oct. 12, 2021

- No definition of “metaverse” in U.S. law
- No substantive definition of AI/AR/VR either

Current regulatory environment imposes “real world” law on virtual environment through a patchwork of existing laws. Contract law only partially addresses existing technology, much less the metaverse.



# Tech Law is 5 Years Behind the Tech ... For Now.

- **U.S. Laws**
  - Intellectual Property
  - SEC and Financial Regulation
  - HIPAA and PII
  - State Privacy Laws
  - E-Discovery Rules in Litigation
- **International Law**
  - European Union and GDPR
  - UK Privacy Laws Post-Brexit
- **Treaties and Trade Law**
  - Technology Import/Export
  - Foreign IP



# You Are Here

## IOT and Personal Data

- Increased opportunity to monitor, collect and aggregate data means increased opportunity for data theft.

## Data Privacy

- Individuals do not own data about themselves. If an individual shares personal information with third parties, the third party owns that data.
- Certain data protected, such as health information, payment information
- Mandatory data breach reporting

## Intellectual Property

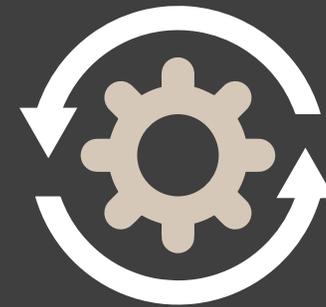
- Statutory protection available for Trademarks, Copyrights, Patents, and Trade Secrets
- Common law protection for Trade secrets, Trademarks, and Copyrights
- Term of Use, Privacy Policies, Licenses, and other Contracts



# Why the Law Lags

(Hint: It's the Process)

- New tech emerges, people start using it
- Risk to public identified (often due to litigation, a data breach, etc.)
- Legislative hearings (such as Zuckerberg Congressional Hearings in 2019)
- Lobbying by interested parties
- Proposed Bill is drafted
- Legislative debate
- Bill is re-drafted by other Congressional body
- Final legislation drafted
- Bill is voted on by Congress, then President signs (or doesn't)
- Law is implemented through regulations – 5 years later
- Courts interpret laws/regulations – 6 to 10 years later



# Where We're Headed

## Enforcement of existing regulations in Metaverse context

- SEC enforced against App Annie, Inc. for fraudulent use of app developers' non-anonymized data ("Alternative Data") in providing advice to its investor clients.
- Department of Commerce established National Artificial Intelligence Advisory Committee to evaluate enforcement of existing regulations and advancement of new laws. Also established subcommittee to evaluate the use of AI by law enforcement.

## Industry self-regulation

1. PCI compliance enforced by Visa, MC, Amex via contracts
2. Discussion of antitrust-compliant self regulation of AI/AR/VR by industry groups such as VR/ARA

## Legislative Outlook

1. 38 states introduced more than 160 consumer privacy related bills in 2021, including 24 states that sought to regulate biometrics. 17 states enacted consumer data privacy bills in 2021, including Colorado and Virginia's comprehensive DP laws.
2. Congress passed Infrastructure Investment and Jobs Act, including \$65 billion for broadband infrastructure, establishes a new State and Local Cybersecurity grant program, and funds tech projects aimed at electrical grid and infrastructure improvement, environmental projects, and clean energy projects.



## For More Information

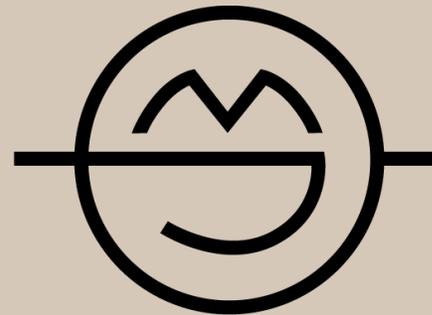
These slides and a resource list are available on our site at:

[meehle.com/MetaverseLaw.pdf](https://meehle.com/MetaverseLaw.pdf)

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## Why the Law Is Lagging Behind the Metaverse

### Resources

“What the metaverse will (and won’t) be, according to 28 experts, *FastCompany*”, October 12, 2021, by Mark Sullivan:  
<https://www.fastcompany.com/90678442/what-is-the-metaverse>

SEC charges App Annie, Inc. with Securities Fraud:  
<https://www.sec.gov/news/press-release/2021-176>

Dept. of Commerce National Artificial Intelligence Advisory Committee:  
<https://www.commerce.gov/news/press-releases/2021/09/department-commerce-establishes-national-artificial-intelligence>

Electronic Privacy Information Center article on FTC rulemaking under FDUTPA:  
<https://epic.org/ftc-signals-it-may-conduct-privacy-ai-rulemaking>

National Association of Counties’ legislative analysis of IIJA:  
<https://www.naco.org/resources/legislative-analysis-counties-infrastructure-investment-jobs-act>

International Association of Privacy Professionals’ US State Privacy Legislation Tracker  
<https://iapp.org/resources/article/us-state-privacy-legislation-tracker>

International Association of Privacy Professionals’ US Federal Privacy Legislation Tracker:  
<https://iapp.org/resources/article/us-federal-privacy-legislation-tracker>

International Association of Privacy Professionals’ GDPR Tools:  
<https://iapp.org/resources/topics/eu-gdpr>

International Association of Privacy Professionals’ “Digital Privacy in the Metaverse World” webinar:  
<https://iapp.org/store/webconferences/a011P00000DbHJXQA3>



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# Contracts for Creatives

## The ABCs of Contracts: 5 Things Creatives need to know before they sign



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0.2%

Percentage of contract law cases that ever make it to trial

41,000

Number of contract cases filed in Florida courts in 2016

120

Average number of contracts we review Each month

1. **Boilerplate.** “Boilerplate” refers to all that stuff in a contract that probably seems like (or is) legal gobbledygook. Creatives often delete boilerplate to simplify their contracts. Trouble is, that boilerplate protects you! Without it, you might not be able to enforce the contract at all.
2. **Work for Hire.** If you are an independent contractor developing creative works for a client, you own the copyrights in the works unless you sign a contract that states that the works are “work made for hire” or you assign the works to the client in writing. Only then do the rights transfer to the client.
3. **Getting Paid.** If you don’t include certain clauses in your contracts, you are less likely to get paid on time (or at all). Examples of effective contract terms that get you paid include the right to charge interest, liquidated damages, injunctive relief, withholding rights to the work, and attorneys’ fees provisions.
4. **Doing It Yourself.** Generic contracts found online, or contracts written for someone else, frequently do more harm than good. They are not likely to fit your situation and therefore are more likely to result in an unenforceable contract or lead to litigation. It is much more expensive to hire an attorney to handle a dispute than it is to protect yourself with a properly written contract.
5. **Words Matter.** A contract is like a spell – if you don’t use the right words, the magic doesn’t work. “Terms of art” are certain words or phrases in contracts that have specialized definitions or a particular legal impact. Their presence or absence can make all the difference in what your contract really means.

# Copyrights

Art and music feed your soul, but knowing your rights can keep you from going hungry.



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**\$55**

Average cost of a  
copyright registration

**\$150,000**

The maximum  
statutory damages for  
infringement

**100%**

Your percentage of  
liability when  
collaborating

## Chew on this:

1. You don't have to register to own the copyright. Copyright exists as soon as you make your work tangible (or even digital!). Registration allows you to sue, but you have certain rights as soon as you create your original work.
2. The Poor Man's Copyright is a poor substitute. Mailing yourself a copy of your work doesn't give you any of the benefits of registration (such as the ability to sue to enforce your rights, increased damages, and an award of attorneys' fees and costs). It really just gives you mail. Register your work at [copyright.gov](http://copyright.gov).
3. Parodies, promotion, and unlicensed covers usually aren't legal. The copyright owner has the exclusive right to reproduce, publicly perform, publicly display, distribute, and make derivatives of their work...EVEN FOR FREE. Covers must be licensed. "Promotional use only" is not a legal defense. Parodies are allowable only in limited circumstances (it's a four-factor test).
4. If it's not in writing, you don't own it. If you pay for a pizza, it's yours. Not for copyrights, though! Simply paying someone to create a work DOES NOT give you the copyright, even if it was your idea or concept. This can only be accomplished with a properly written agreement.
5. Sharing equally isn't always fair. When you collaborate with others to create a work, the law makes you share the rights equally regardless of how much each person contributed to the work, unless you have a written agreement that states otherwise. Do you want someone who only contributed 10% to have the right to do whatever they want with the work, plus get half the money? Yeah, me either. Also, you're on the hook for the full amount if they contribute infringing material.

# Trademark Facts

Love your name and logo? Great! What are you doing to make sure they're really yours?



**100**

Marks we've registered and counting

**1.2 mil**

Average award of TM damages per case per ABA 2000-2009

**50%**

Applications rejected when self-filing or using service like LegalZoom  
[www.fitsmallbusiness.com](http://www.fitsmallbusiness.com)

## Let's bust a few myths:

1. Registering with the State does NOT protect your name.  
People often mistakenly think that if they have registered with the State (as an LLC or Fictitious Name, for example) this means that the name is rightfully theirs. Not true! The State will only block the registration of an exact match within Florida. It does not pertain to trademark rights.
2. Marks don't need to be exact to be an infringement.  
The standard for trademark infringement is "likelihood of confusion," which means that the names or images needn't be exact. Furthermore, they could be in a different market and still conflict!
3. Owning the URL is NOT enough to protect you.  
Owning a domain name does not mean that you have the rights to the name. In fact, you could be accused of cybersquatting and trademark infringement by the owner of a similar name.
4. Even small businesses can run into big trademark problems.  
Small businesses routinely invest 10% to 20% of their gross revenue on marketing. If it turns out that another company asserts that you are infringing on their mark, you could lose all of that money spent, plus all of the name recognition, your domain name, and every physical item that bears the infringing mark. Yikes!
5. It's actually cheaper to use an attorney!  
We use a flat fee structure with no surprises. It's much cheaper to have a comprehensive search performed to make sure your use is clear, followed by properly filed applications with the USPTO to secure the maximum enforcement of your marks. The potential cost of losing the name you worked so hard to build (or worse, getting sued for infringement) is far more expensive