

# **METaverse AND DESIGNS:** **Challenges and Opportunities**

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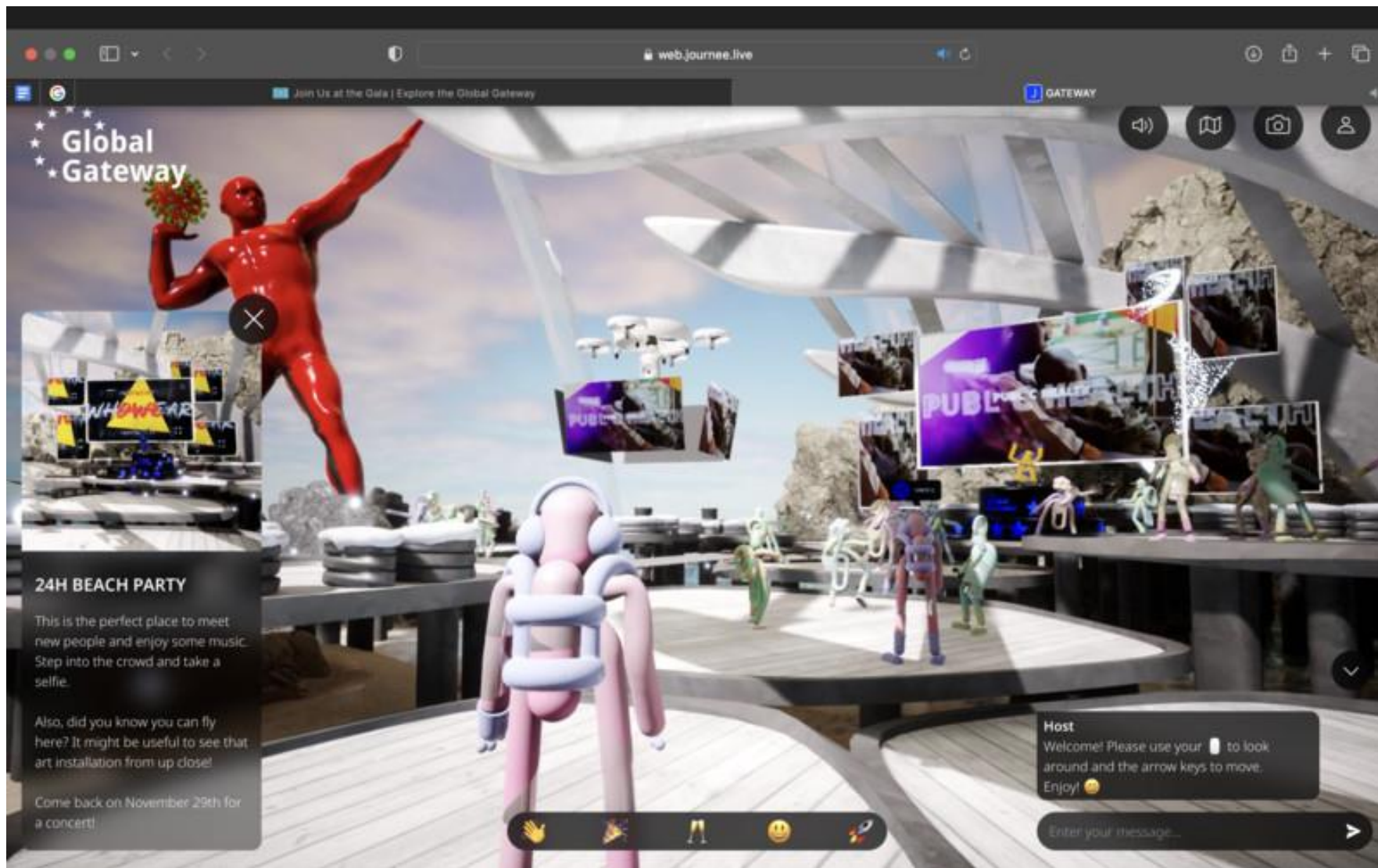
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## Introduction to metaverse

- “Metaverse” coined by Neal Stephenson in his novel “Snow Crash” in 1992
- In 2021, Mark Zuckerberg changes Facebook’s name to “Meta”
- No single definition of “metaverse”:
  - “an immersive and constant virtual 3D world where people may interact through an avatar” ([EUIPO](#))
  - “a digital virtual world where individuals can create character avatars and play them through interactive programmed and created experiences” ([Epic Games, Inc. v. Apple Inc, Northern District Court of California](#))





<https://euobserver.com/digital/156503>



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  - “a digital virtual world where individuals can create character avatars and play them through interactive programmed and created experiences” ([Epic Games, Inc. v. Apple Inc, Northern District Court of California](#))
- BUT: no interoperable metaverses as for now, less “hype” since COVID pandemic has finished



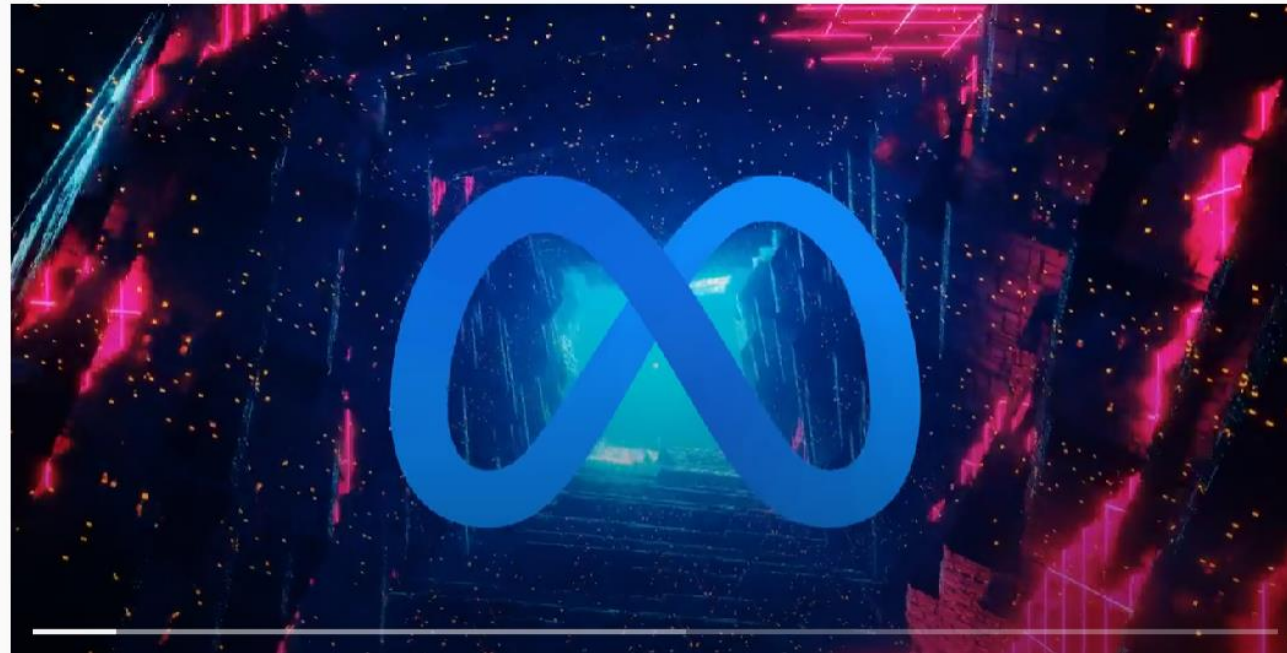
TheStreet

OPINION

# Mark Zuckerberg Quietly Buries the Metaverse

The CEO of social-media giant Meta has sworn by AI, popularized by the chatbot ChatGPT.

LUC OLINGA • MAR 18, 2023 8:06 AM EDT



<https://www.thestreet.com/technology/mark-zuckerberg-quietly-buries-the-metaverse>



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# Metaverse and Designs: Overview

- Key concepts of EU design law
- Revision of EU Design Regulation
- Metaverse-related issues in EU design law

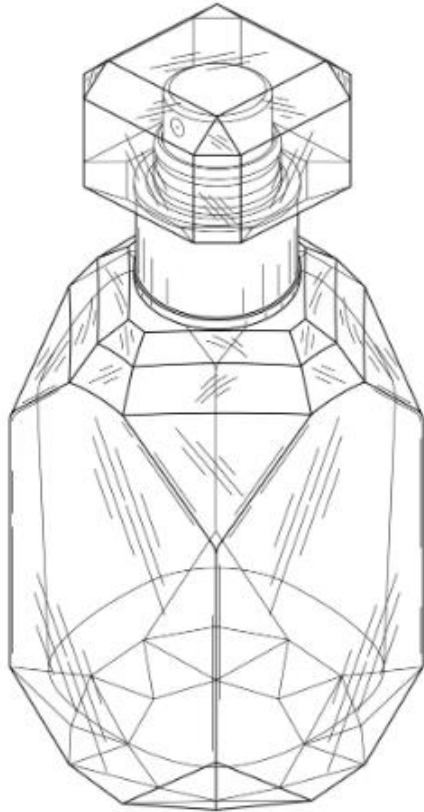


## Key concepts of EU design law

- “Design”: the appearance of the whole or a part of a product (art. 3 Regulation 6/2002/CDR)







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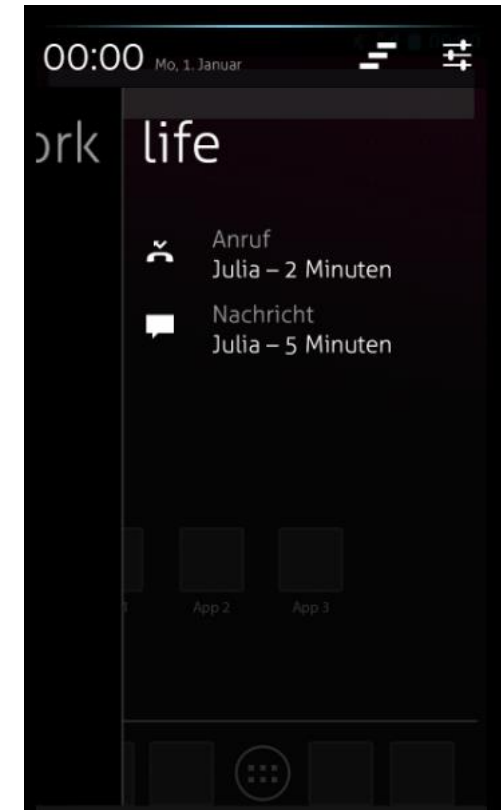
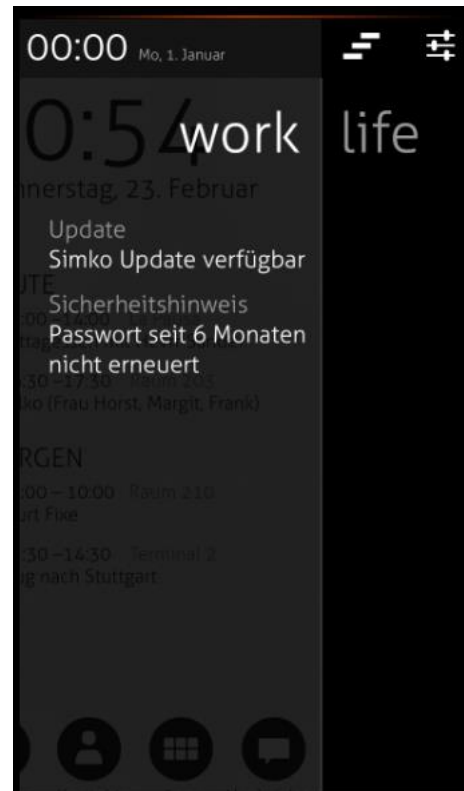
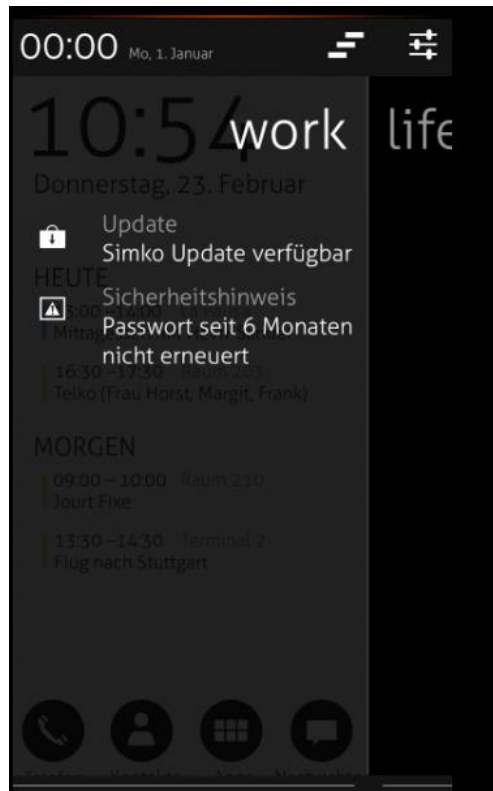
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## Key concepts of EU design law

- “Design”: the appearance of the whole or a part of a product (art. 3 Regulation 6/2002/CDR)
- Registered designs (up to 25 years) and unregistered designs (3 years from first making available)
- Novelty and individual character



## Revision of EU Design Regulation

- Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 ([text](#))
- Only a limited revision of the existing regime
- Most changes are motivated by the digital world (3D printing, GUI, videogames), including a new exclusive right to combat illegitimate 3D printing
- Also: design protection over goods in transit, administrative invalidity proceedings for national designs, new limitations for designs rights (referential use, use for comment, critique or parody)
- Currently reviewed by the European Parliament



## Metaverse-related issues in EU design law

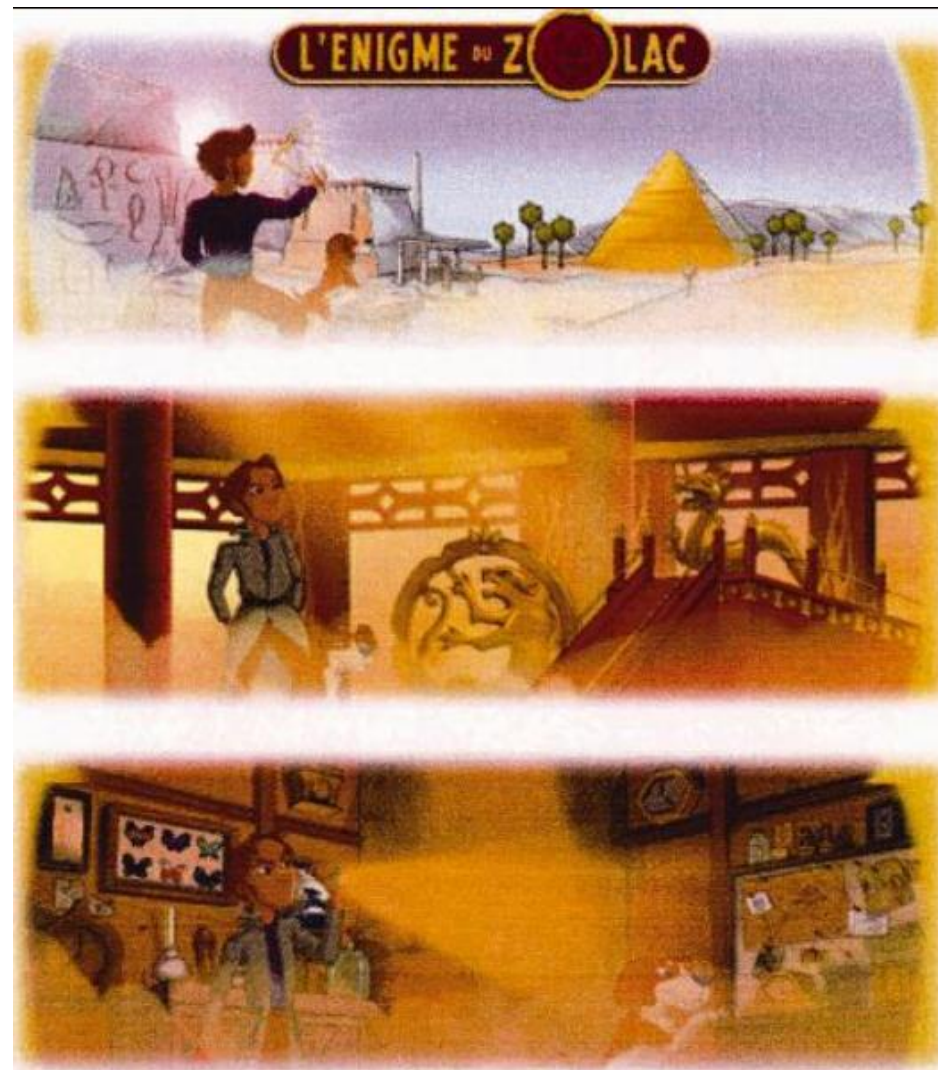
- Definitions
- Product indication
- Representation in the design application
- Making available to the public
- Cumulation of design rights and copyright



## Definitions (1)

- EU design legislation was drafted in 1980s and does not take into account virtual environments
- “Design” means the appearance of the whole or a part of a product, while “product” means any industrial or handicraft item (art. 3 CDR)
- BUT: practice evolved to accommodate digital designs, such as icons, graphic user interfaces and the like, corresponding to Class 14-04 of the Locarno Classification (EUIPO Design Guidelines, 4.1.3)





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## Definitions (2)

- Draft Regulation (art. 3):
  - ‘design’ means the appearance of the whole or a part of a product resulting from the features, in particular, the lines, contours, colours, shape, texture, materials of the product itself and/or its decoration, including the movement, transition or any other sort of animation of those features;
  - ‘product’ means any industrial or handicraft item other than computer programs, regardless of whether it is embodied in a physical object or materialises in a digital form, including:
    - (a) packaging, sets of articles, get-up, spatial arrangement of items intended to form, in particular, an interior environment, and parts intended to be assembled into a complex product;
    - (b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces;





## Product indication

- Art. 36(2) CDR: design application shall contain a product indication (e.g. “3 D toy figures” or “computer screen layout”). Unchanged in Draft Regulation.
- Recital 14 CDR: the assessment of design’s individual character should take into account the nature of the product. This includes the product indication, but not only (*Grupo Promer*, [T-9/07](#))
- EUIPO issued guidance on product indication for digital designs:
  - Provide both a physical and virtual product indications for designs only intended for use in virtual environments. Provide both a physical and virtual product indications for designs intended for use in both real and virtual environments. Where a 3D design is incorporated in a physical product, it continues to be is enough to indicate that physical product only.
- BUT: product indication does not affect the scope of protection (Art. 36(6) CDR).
- A design “[...] confers on its holder the exclusive right to use the relevant design in all types of products, and not only in the product indicated in the application for registration.” (*Easy Sanitary Solutions*, [C-361/15 P and C-405/15 P](#))



## Representation of the design

- The representation of the design shall consist in a graphic or photographic reproduction of the design (Art. 4(1) Commission Regulation 2245/2002)
- Up to seven different views of the design (Art. 4(2) Commission Regulation 2245/2002)
- 3D computer-animated design generating motion simulation can only be considered as an additional technical means of viewing the design and does not replace conventional static views (EUIPO Design Guidelines, 3.3.1)
- Accommodates static, not moving digital designs





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- 3D computer-animated design generating motion simulation can only be considered as an additional technical means of viewing the design and does not replace conventional static views (EUIPO Design Guidelines, 3.3.1)
- Accommodates static, not moving digital designs
- Draft Regulation: “‘design’ means the appearance of the whole or a part of a product resulting from the features, in particular [...] the movement, transition or any other sort of animation of those features”
- Most probably, 3D digital representations and video files will be allowed.



## Making available to the public (1)

- Novelty and individual character are examined from the date, on which the design has been first made available to the public (arts. 5-7 CDR). For the purposes of novelty and individual character examination, this means publishing following registration or otherwise, or exhibiting, using in trade or otherwise disclosing, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community.
- An unregistered design shall be protected for three years from the date it was first made available in the Community. (art. 11 CDR)
- Revision in 2004 prior to enlargement “a design which has not been made public within the territory of the Community shall not enjoy protection as an unregistered Community design” (art. 110a(5) CDR).



## Making available to the public (2)

- Is making available in the metaverse environment sufficient (to destroy novelty/individual character or to give rise to an unregistered design)?
- Must the metaverse platform have an EU seat or is only reaching EU circles enough?
- Is an open Internet environment comparable to closed metaverse platforms?
- EUIPO practice:
  - making available on the Internet is sufficient, provided it reaches the specialised circles ([ICD 9282](#));
  - restricted access (e.g. password protection) or paid access do not destroy the act of making available, provided it reaches the specialised circles ([ICD 9312](#)).
- Art. 110a(5) to be deleted in the revised Regulation.



## Cumulation of design rights and copyright

- No/partial/full cumulation of rights
- CDR: “A design protected by a Community design shall also be eligible for protection under the law of copyright of Member States as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.” (Art. 96(2))
- GUIs can be protected by copyright (*Bezpečnostní softwarová asociace*, [C-393/09](#))
- Parts of a videogame, such as graphic and sound elements, can be protected by copyright (*Nintendo*, [C-355/12](#))
- Draft Regulation: “A design protected as an EU design shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form, provided that the requirements of Union copyright law are met.” (Art. 96(2))





## Key takeaways

- Technology usually develops before the law does: it is completely normal
- Earlier technologies offer many answers to metaverse-related issues: videogames, virtual and augmented reality, 3D printing
- Other IP questions are also relevant in the metaverse: copyright, trade marks, platform liability, interoperability and standards



## Further materials

- Trade marks and designs in the metaverse: legal aspects/EUIPO practice (EUIPO Academy [online course](#))
- The European Commission publishes the proposals for a revised Regulation and Directive on designs ([The IPKat](#))
- Design Protection for Graphical User Interfaces – Working Paper ([ECTA](#))
- Viola Elam, CAD Files and European Design Law, 7 (2016) JIPITEC 146 ([open access](#))
- European Commission, [The intellectual property implications of the development of industrial 3D printing](#), 2020
- Mendis D, 'Fit For Purpose? 3D Printing And The Implications For Design Law: Opportunities And Challenges', Research Handbook on Intellectual Property and Digital Technologies (Edward Elgar Publishing 2020) ([open access](#))
- La impresión 3D y los diseños industriales: un encuentro esperado en las propuestas de modificación del Reglamento y la Directiva ([Lvcentinvs](#))



**Thank you for your attention!**



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