

Kluwer Arbitration Blog

Paris Arbitration Week Recap: Blockchain, NFTs and the Metaverse

Jalal El Ahdab, Claire Bentley (Bird & Bird) · Saturday, May 14th, 2022

As part of the 2022 Paris Arbitration Week, **Bird & Bird**, with the support of **ArbTech** and the **Chartered Institute of Arbitrators (CIArb)**, held an event on “**Blockchain, NFTs, and the metaverse: Is arbitration ready to verse into a new universe?**”. Paris-based international arbitration partner **Jalal El Ahdab** (*Partner, Bird & Bird*) and IP partner **Géraldine Arbant** (*Partner, Bird & Bird*) from the Lyon office co-moderated the hybrid event, which was attended by more than 40 people in person and over 200 online. During the two-part event, the speakers explored blockchain technology, its relationship to cryptocurrencies and NFTs, as well as the rising world of the metaverse. Beyond the basics of these novel technologies, the discussion covered the consequences for international arbitration, whether in terms of the disputes they may generate or their implications for the arbitration procedure itself.

London Tech Transactions partner **Jonathan Emmanuel** (*Partner, Bird & Bird*) added his expertise together with key players in this space, including **Margarita Kato** (*Legal Case Manager, WIPO Arbitration and Mediation Center*), **Caroline Le Goffic** (*Professor of IP and digital law, Lille University of Law*), **Sophie Nappert** (*Arbitrator in independent practice, 3VB*), **Charlie Neuner** (*Strategy, XR & Metaverse, PwC*), **Stan Putter** (*Partner, Smallegange Advocaten and CEO, Court of Arbitration for Art*), and **Colin Rule** (*President and CEO, Mediate.com and Arbitrate.com, formerly Director of Online Dispute Resolution for eBay and PayPal in the Silicon Valley*).

In the first part, topics covered included blockchain technology, NFTs, and the metaverse.

Blockchain, NFTs, and the Metaverse: Underlying Technology and Various Applications

Venture capital investment in crypto assets reached just over US\$8 billion between January and July of last year, surpassing the total combined investment in the previous two years and representing an increase of over 700 percent since 2015. There are now over 1,600 cryptocurrencies. A **Cosmos token** went up 1,200 percent in value. These are just a few figures that Jonathan Emmanuel cited to illustrate the confidence in the success of the blockchain market, despite some violent fluctuations, before explaining the key terms (blocks of data, cryptography, nodes, accounts, public/private keys, wallets, hashes, and digital signatures) and characteristics (decentralised and immutable) of blockchain technology.

Beeple’s “**Everydays: The First 5000 Days**”, a digital work of art, sold for over US\$69 million at

Christie's in March 2021. NFTs can also be linked to tangible items, such as Hennessy's **BlockBar**, a platform that allows consumers to purchase an NFT that is linked to a physical bottle of luxury liquor stored in a Singapore-based facility, redeemable at any time. As Caroline Le Goffic explained, the blockchain ledger allows the unique identity and ownership of an NFT to be assigned, claimed, and verified. Such tokens are not objects, works or media, but function instead as certificates of authenticity of the asset in question. Other applications of NFTs include land records, the certification of the authenticity of medical drugs and vaccines, ticketing to sports games and concerts, and gaming, especially play-to-earn games.

It is estimated that the value of the metaverse will reach **US\$800 billion, generating US\$1 trillion in revenue, by 2024**. Tech companies are scrambling to provide the tool kits necessary for its creation. Noting the opportunities for the legal industry to move into this digital world, Charlie Neuner described a metaverse as an evolving, immersive digital world where we can live, work, and play together. The metaverse promises a collection of digital 3D worlds that supports continuity of purchased and created identifies, objects, data, and can be experienced simultaneously by an unlimited number of users.

In part two, the panellists considered the arbitration of blockchain-related disputes and the use of blockchain technology in the dispute resolution process, arbitration in the field of arts and NFTs, and the resolution of metaverse-related disputes.

Disputes Relating to Blockchain, NFTs, and the Metaverse

“Wherever there are human minds transacting, there will be disputes”, as Sophie Nappert observed. Whether “on-chain” (i.e. on the blockchain) or “off-chain” (i.e. where a blockchain-based transaction gives rise to a dispute that is settled through a more traditional dispute resolution process), disputes are already occurring.

In a judgment issued in March 2022, Bird & Bird successfully defended 12 developers of Bitcoin in **Tulip Trading Ltd v Bitcoin Association for Bitcoin SV (BSV) and others** over the claimant's allegation that it suffered a hack and was prevented from accessing its crypto assets. The Court found that the developers did not owe fiduciary duties or a common law duty of care to users of the code in question. For another example, consider the disputes involving the cryptocurrency trading platform Binance, as **reported previously on Kluwer Arbitration Blog**.

Is international arbitration well-suited to the resolution of blockchain-related disputes? According to Sophie Nappert, we're not there yet. The immediacy of transactions, the anonymity of users, the principles of due process... these and other factors must be considered to ‘dust off’ arbitration in its current form to align with the values championed by blockchain and metaverse users. Other issues considered include whether a cryptocurrency asset is a “protected investment” under international law (on Kluwer Arbitration Blog, see **here** and **here**) and whether blockchain can be used for evidentiary purposes, such as for record-keeping in preparation for a potential construction dispute (see also the blockchain-based IP protection offered by **KODAKOne**).

The trading of NFTs raises novel IP issues. As Stan Putter explained, an NFT can either be sold separately from or together with the underlying asset. In the case of **Bored Ape Yacht Club** NFTs, for example, holders acquire IP ownership rights. As NFT marketplaces take steps to prevent the infringement of IP rights, Margarita Kato outlined the procedures that they have implemented, such as **OpenSea's** notice and takedown process). The NFT space has already generated high-

stakes disputes, including between luxury retailer Hermès and digital artist Mason Rothchild over his creation of **MetaBirkins**. More recently, Nike is pursuing online resale marketplace StockX LLC over its sale of **NFTs linked with the name and image of Nike shoes**. Although the **Court of Arbitration for Art (CAfA)** in The Hague has yet to administer any NFT-related disputes, it should not be long before the emergence of this new era of arbitration cases.

Although considering that international arbitration, in its present form, lacks the efficiency required to resolve the high volume of cross-border disputes likely to be generated in the metaverse, Colin Rule expects significant innovation in the coming years. The key players building these marketplaces and metaverses will need to consider how to build **trust** and contribute to the redesign of dispute resolution processes to reflect the dynamics of these environments, i.e. “fit the forum to the fuss”. One example is **decentralized justice**, which is not dependent on national laws or geography, but rather on code.

Whether the metaverse is fundamentally different from gaming environments or **Second Life**, launched nearly two decades ago, remains a subject of debate. What is certain, however, is that the advent of Web 3.0, and the many metaverses that will exist within it, will require those both within and outside the international arbitration community to grapple with these questions.

Conclusion

As cryptocurrencies, blockchain, and the metaverse assume an increasingly important role in our society, disputes are sure to follow, whether in relation thereto and/or therein. Just as international arbitration has managed to rapidly adapt to the “new normal” brought on by the COVID-19 pandemic, there is reason to believe that this form of dispute resolution could become an effective means to resolve the multitude of disputes that are likely to be generated from and in relation to these rapidly-evolving technologies. Whether the tenets of arbitration, notably due process, are ultimately compatible with the efficiency that is expected by the users and creators of these new technologies remains to be determined.

If you would like to view a recording of the event, please click [here](#).

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