

Intellectual Property Rights in New Digital Ecosystems

May 16, 2023

SPONSORING COMMITTEE: Emerging Issues Committee

RESOLUTION:

WHEREAS, the International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and complementary IP to foster consumer trust, economic growth, and innovation;

WHEREAS, INTA has established permanent standing committees to consider complementary intellectual property, including INTA's committees on Copyrights, Designs, Right of Publicity, Geographical Indications, Indigenous Rights, Internet (domain names), and Emerging Issues;

WHEREAS, after the Internet evolved into a marketing and distribution channel of commerce, experience demonstrated the efficacy of recognizing and enforcing IP rights online and in "cyberspace", such as protections for trademarks and copyrights in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), Uniform Rapid Suspension (URS), and Digital Millennium Copyright Act (DMCA) Takedown Procedures;

WHEREAS, recent technological developments have resulted in new/emerging digital ecosystems, including blockchain technology, cryptocurrency, Web 3.0 domain names, non-fungible tokens (NFTs), and the metaverse (collectively the "New Digital Ecosystems" or "NDEs");

WHEREAS, the NDEs have once again raised the issue of the applicability, recognition, and enforcement of IP rights;

WHEREAS, INTA believes that the rapid development of NDEs requires a statement of basic principles regarding the applicability of IP rights in these NDEs;

WHEREAS, the Blockchain Subcommittee and the New Emerging Issues Subcommittee of INTA's Emerging Issues Committee, in collaboration with other advocacy related committees, have conducted in-depth studies of the NFT and Metaverse, resulting in the development and publication of INTA White Papers: NFT White Paper and Trademarks in the Metaverse White Paper;

BE IT RESOLVED, that it is the position of INTA that IP is capable of existing, being exercised, and being infringed, in digital ecosystems. Therefore, IP rights should be respected in such ecosystems.

BE IT RESOLVED, that applicable international laws and treaties, regional laws, national laws and self-regulation for the recognition and enforcement of IP rights should apply in NDEs and be continuously reviewed and developed accordingly.

BE IT RESOLVED, that to the extent that IP existing or exercised in NDEs is protected by more than one type of IP right, enforcement of some or all applicable IP rights should be permissible in digital ecosystems, at the discretion of the IP rights owner.

BE IT RESOLVED, that to the extent practicable, a harmonized cross-jurisdictional approach should be developed for the recognition and enforcement of each type of IP right in NDEs, recognizing territorial limitations of IP rights but also considering the global accessibility of such ecosystems.

BE IT RESOLVED, that stakeholders are encouraged to develop and implement tools and options for the protection and enforcement of IP rights in NDEs.

BACKGROUND:

The rapid development and adoption of NDEs like blockchain technology holds the potential for correspondingly rapid innovation across various industries, with new applications and use cases continuously emerging.

However, the increasingly decentralized nature of many NDEs represents a paradigm shift that may disrupt the existing IP rights framework. NDEs transcend geographical boundaries, raising complex cross-border IP rights issues. The pseudonymity provided by NDEs and in particular blockchain technology can make it difficult to identify infringers and enforce IP rights. While traditional centralized systems rely on known intermediaries to manage and enforce IP rights, or at least be held accountable for a lack of enforcement, in many cases NDEs such as blockchain's distributed ledger technology bypass or eliminate these intermediaries which leaves IP owners without any meaningful remedy for infringement of their IP.

Amidst this rapidly evolving landscape, it is imperative to create a framework that will allow INTA to: i) timely react to, or contribute guidance to, policy makers when asked about the implications of these NDEs on IP rights, while also allowing time for the relevant advocacy committees to develop their positions on specific issues related to NDEs in various scenarios i.e. Enforcement, Prosecution, maintenance, and for the Board to adopt said positions; ii) set a framework from which INTA should develop a specific position.

INTA is increasingly being asked by IP-related Agencies to respond to requests related to IP Rights in new digital ecosystems. For instance, INTA was requested to submit comments to the USPTO and USCO about a study on NFT's and Related IP issues and participated in three of the Roundtables hosted by USPTO about it, in January 2023. https://www.inta.org/wp-content/uploads/public-files/advocacy/testimony-submissions/20230210_USPTO-USCO-NFT-2023-Study-Feb-3-FINAL-.pdf.

INTA also submitted comments with the UKIPO on its proposal of Practice amendments on "Classifications of NFTs, virtual goods, and services provided in the metaverse" https://www.inta.org/wp-content/uploads/public-files/advocacy/testimony-submissions/20230303_UKIPO-PAN-INTA-Comments.pdf.

In addition, courts are increasingly grappling with these issues, and INTA's position may be requested or beneficial to members, which may result in the submission of Amicus briefs by INTA. Publishing a resolution on the recognition of IP rights will serve as a first step in INTA's contribution to a framework for the application of IP Rights in NDE's, and more broadly helping society understand these issues as well as the benefits of IP rights.

INTA notes in particular the following six innovations leading to NDEs:

- **Blockchain** – Distributed ledger technology.
- **Cryptocurrency** – Digital currency using blockchain technology. Cryptocurrency is often in the form of fungible tokens enabled by “smart contract” technology.
- **Non-Fungible Tokens (NFTs)** – Unique tokens that exist on blockchains, often associated with assets and/or works of authorship that may be digital-only or be a real-world object. NFTs may also incorporate “smart contract” technology which enables automated actions based on preset conditions such as payment of royalties every time the NFT is transferred.
- **Web 3.0 Domain Names** – NFTs that have the appearance of traditional domain names. Web 3.0 Domain Names currently have limited functionality and are most commonly used as human readable shortcuts to alphanumeric blockchain addresses. Web 3.0 domain names typically do not exist within the traditional DNS system but are increasingly interoperable with the DNS system and efforts are ongoing to make them function in a manner more analogous to traditional domain. Web 3.0 Domain Names operate under varying levels of decentralization depending on the provider and are not subject to UDRP/URS procedures.
- **Metaverse** – While there is no one set definition for the metaverse, it is commonly understood to consist of a grouping of persistent and interconnected virtual reality and/or augmented reality worlds, including but not limited to video games and gaming, but extending far beyond it to include business communications and transactions, education, and buying and selling of virtual (and potentially real world) goods and services, featuring the ability to exchange, transfer, or communicate in a seamless manner the outcomes, assets, and information from one such world to another, and allowing a single human user to develop and use the same avatar and virtual assets across multiple digital worlds, likely through the use of NFTs.
- **Virtual Reality (AR) and Augmented Reality (AR)** – VR technology allows a user to experience and engage in a completely virtual environment. AR technology displays information on top of what a user sees in the real world.

In the late 1990’s, the adoption of the UDRP/URS procedures for the first time confirmed that the Internet community would recognize and enforce certain IP rights in the completely digital environment of the Domain Name System.

Carrying this concept forward, the issue is how IP rights should be recognized and protected in new digital ecosystems, such as NFTs, the Metaverse and any other emerging digital ecosystems.

Therefore, based on the above analysis, INTA believes that Intellectual Property (IP) is capable of existing and being exercised in new digital ecosystems (NDEs), encompassing Blockchains, Cryptocurrencies, Web 3.0 Domain Names, Non-Fungible Tokens (NFTs), and the Metaverse (including virtual reality and augmented reality technologies), along with future digital ecosystems yet to be conceived. Therefore, IP rights should be respected in such environments, and appropriate principles of IP protection should become part of the rules governing all digital ecosystems including NDEs.