Swiss Arbitration
Centre

2 February 2023

Metaverse-related disputes: which court, which law?

Juliette Asso,
Counsel, LALIVE

swissarbitration.org/centre
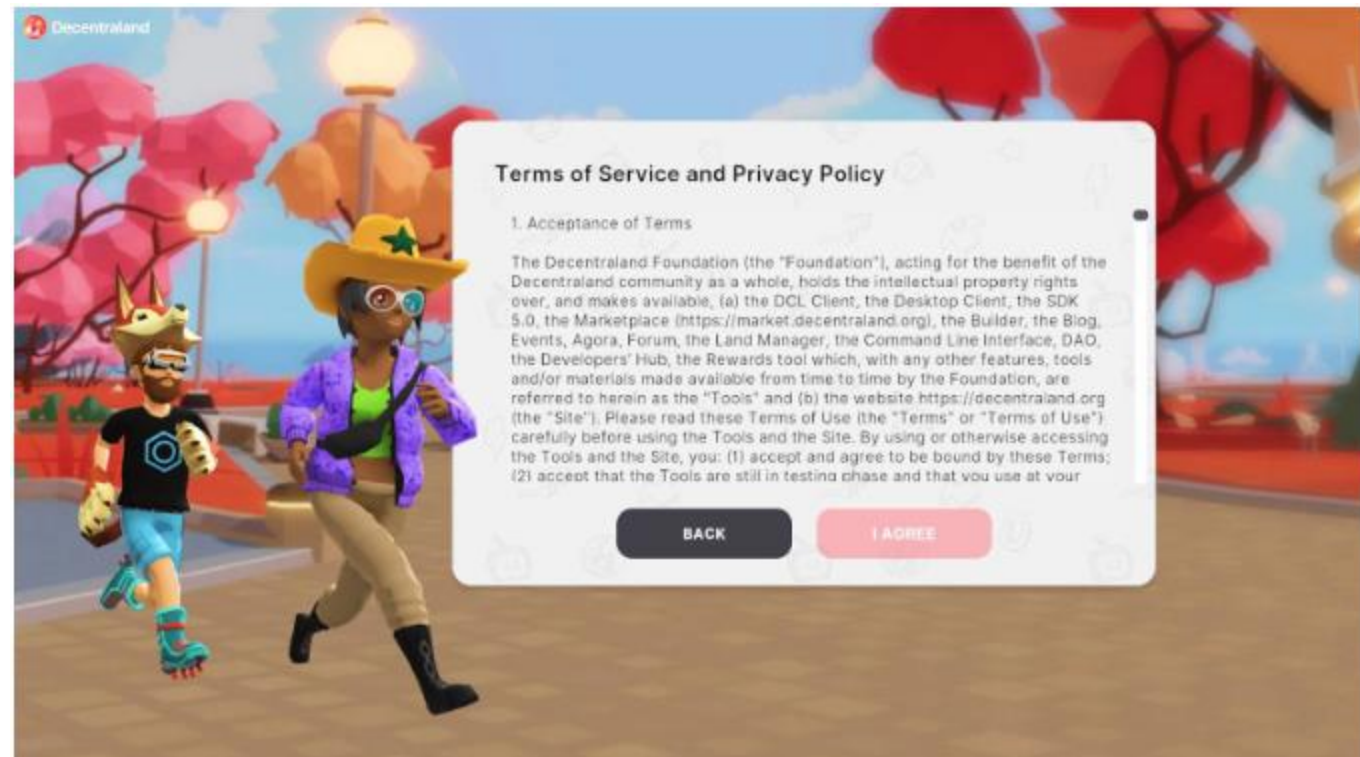
Table of Contents

What is the legal framework?

Which court?

Dispute resolution clauses
Are they common practice?

Click-wrapping agreements

Dispute resolution clauses
Are they common practice?

Included into smart contract's code?


```
Code    Read Contract    Write Contract

File 4 of 15 : ERC721URIStorage.sol

 9      @dev ERC721 token with storage based token URI management.
10   */
11 ▾ abstract contract ERC721URIStorage is ERC721 {
12       using Strings for uint256;
13
14       // Optional mapping for token URIs
15       mapping(uint256 => string) private _tokenURIs;
16
17 ▾     /**
18        * @dev See {IERC721Metadata-tokenURI}.
19        */
20 ▾     function tokenURI(uint256 tokenId) public view virtual override returns (string memory) {
21           require(_exists(tokenId), "ERC721URIStorage: URI query for nonexistent token");
22
23           string memory _tokenURI = _tokenURIs[tokenId];
24           string memory base = _baseURI();
25
26           // If there is no base URI, return the token URI.
27 ▾         if (bytes(base).length == 0) {
28               return _tokenURI;
29           }
30           // If both are set, concatenate the baseURI and tokenURI (via abi.encodePacked).
31 ▾         if (bytes(_tokenURI).length > 0) {
32               return string(abi.encodePacked(base, _tokenURI));
33           }
```

Dispute resolution clauses
Are they common practice?

Included into smart contract's code?

Contract Source Code (Solidity Standard Json-Input format)

File 1 of 15 : mnlthrvld.sol

```
1    // SPDX-License-Identifier: MIT
2
3 ▾  /*
4        RTFKT Legal Overview [https://rtfkt.com/legaloverview]
5        1. RTFKT Platform Terms of Services [Document #1, https://rtfkt.com/tos]
6        2. End Use License Terms
7        A. Digital Collectible Terms (RTFKT-Owned Content) [Document #2-A, https://rtfkt.com/legal-2A]
8        B. Digital Collectible Terms (Third Party Content) [Document #2-B, https://rtfkt.com/legal-2B]
9        C. Digital Collectible Limited Commercial Use License Terms (RTFKT-Owned Content) [Document #2-C, https://rtfkt.com/legal-2C]
10
11       3. Policies or other documentation
12       A. RTFKT Privacy Policy [Document #3-A, https://rtfkt.com/privacy]
13       B. NFT Issuance and Marketing Policy [Document #3-B, https://rtfkt.com/legal-3B]
14       C. Transfer Fees [Document #3C, https://rtfkt.com/legal-3C]
15       C. 1. Commercialization Registration [https://rtfkt.typeform.com/to/u671kiRL]
16
17       4. General notices
18       A. Murakami Short Verbiage - User Experience Notice [Document #X-1, https://rtfkt.com/legal-X1]
19   */
20
21   pragma solidity ^0.8.2;
22
23   import "@openzeppelin/contracts/token/ERC721/ERC721.sol";
24   import "@openzeppelin/contracts/token/ERC721/extensions/ERC721Enumerable.sol";
25   import "@openzeppelin/contracts/token/ERC721/extensions/ERC721URIStorage.sol";
```

Dispute resolution clauses
Are they valid?

Choice of court or arbitration agreement must be

- In writing, or

- By any other means of communication, as long as the text remains accessible for subsequent reference

- Art. 3(c) Hague Convention on Choice of Court Agreement (2005)

- Art. 23(1)(a) Lugano Convention

- Art. 25(1) Brussel Ibis Regulation

- Art. 5(1) and 178 Swiss PILA

Dispute resolution clauses
Are they valid?

Reference to terms and conditions in the main description of the digital asset


Description

By **RTFKT** ✓

Introducing the first RTFKT x Nike Sneaker NFT, the RTFKT X Nike Dunk Genesis CRYPTOKICKS Sneaker 👟.

When equipped with a RTFKT Skin Vial NFT, the look of the RTFKT x NIKE DUNK GENESIS CRYPTOKICKS changes according to the traits of the vial.

Digital Collectible terms and conditions apply, see: https://rtfkt.com/legal-2D 🙋

What is the default jurisdiction?
Are metaverse transactions international?
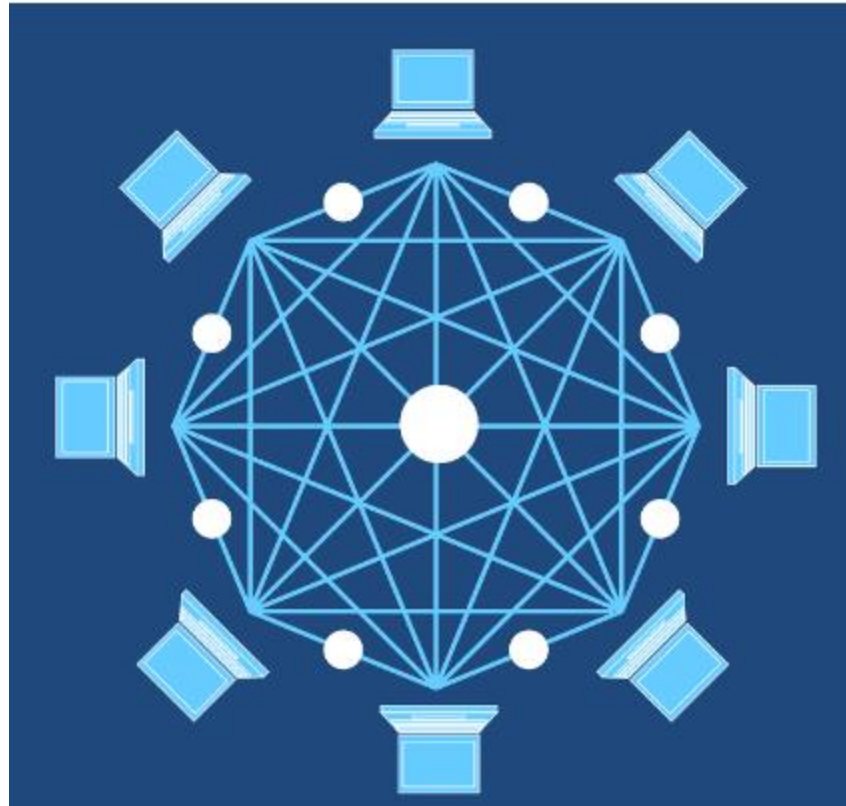
What is the default jurisdiction?
PIL connecting factors

- Place of defendant's habitual residence, place of business or domicile

  - Art. 112 Swiss PILA; Art. 2 Lugano; Art. 4 Brussel Ibis

- Place of performance of contracts/transactions

  - Art. 113 Swiss PILA; Art. 5(1) Lugano; Art. 7(1) Brussel 1bis

- Location of the servers

- Location of digital assets

- Registered seat of the metaverse company

- Courts of the claimant's domicile/place of business as a subsidiary solution?

Action against whom?

- Defendant identified as owner of digital wallet

  - *Chainswap Limited vs The Owner of Digital Wallet 0X941A9E3B91E1CC015702B897C512D265FAE88A9, et all (BVI Commercial Court, 15 Mar. 2022)*

- Service through NFT Airdrop

  - *LCX AG v 1.274M US Dollar Coin et al, No. 156444/2022 (N.Y. Sup. Ct Aug, 22, 2022)*

  - *[2022] EWHC 1723 (Ch) in D'Aloia v Person Unknown & Others*

- Digital certificates for digital identity

Which law?

Choice of law clauses
Are they valid?

Choice of law clauses valid in principle (no formal requirement)

- Art. 116 PILA

- Art. 3 Rome I Regulation

- Art. 2 Hague Principles on Choice of Law in International Contracts

What is the fallback rule?
PIL connecting factors

- Closest connection (seller or service provider's habitual residence)

  - Art. 117 Swiss PILA, Art. 4 Rome I Regulation

- Location of servers

- Location of digital asset

- *Lex fori* as a subsidiary solution? Or claimant's domicile or place of business?

Conclusion

Thank you

Juliette Asso
jasso@lalive.law

centre@swissarbitration.org   swissarbitration.org/centre