

Prospering and Protecting Yourself in the Metaverse: Key Considerations For a New Blockchain-based Reality

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Understanding the evolution of Web3 and the metaverse including the basics of blockchain, cryptocurrency, NFTs and deal making



An overview of notable transactions and emerging platforms establishing their place in the metaverse and key issues related to the protection of intellectual property on digital platforms



Addressing the various risks of engaging in the metaverse including the importance of developing strategies to mitigate potential risks and litigation when starting your journey in this frontier space

Understanding the Blockchain Basics

Where We Started

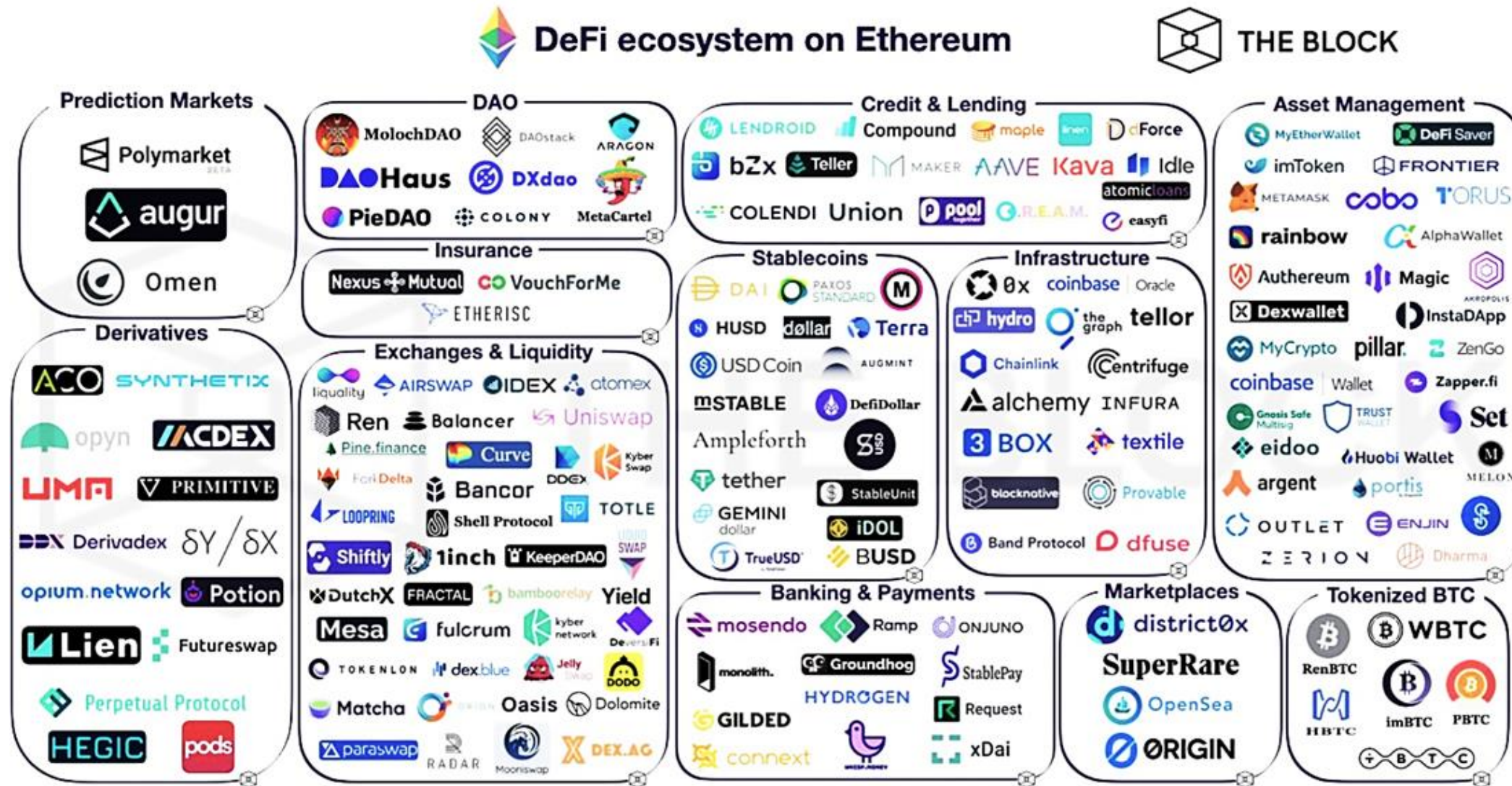


Where We're Heading



Image Source: Web 1.0, Web 2.0 & Web3 Explained - DEV Community

Ethereum (ETH) Blockchain – It's Deep and Wide



Source: Mapping Out Ethereum's DeFi, The Block, John Dantoni, 2019.

DeFi: Tokenizing Real Work Assets

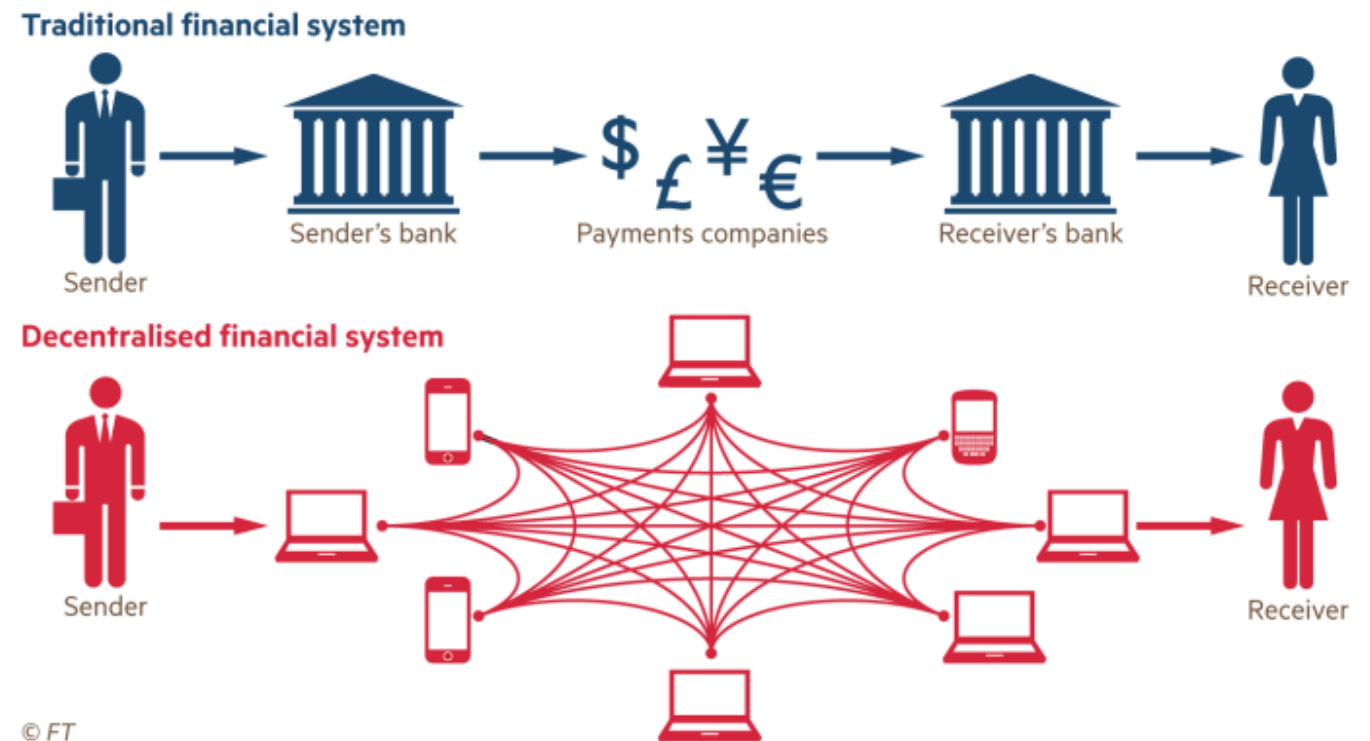
- What Is Distributed Finance?

- Technological movements toward decentralizing legacy financing—legacy financial instruments, institutions and use cases

- Smart contracts/dapps

- Decentralized Lending

- Decentralized Asset Finance

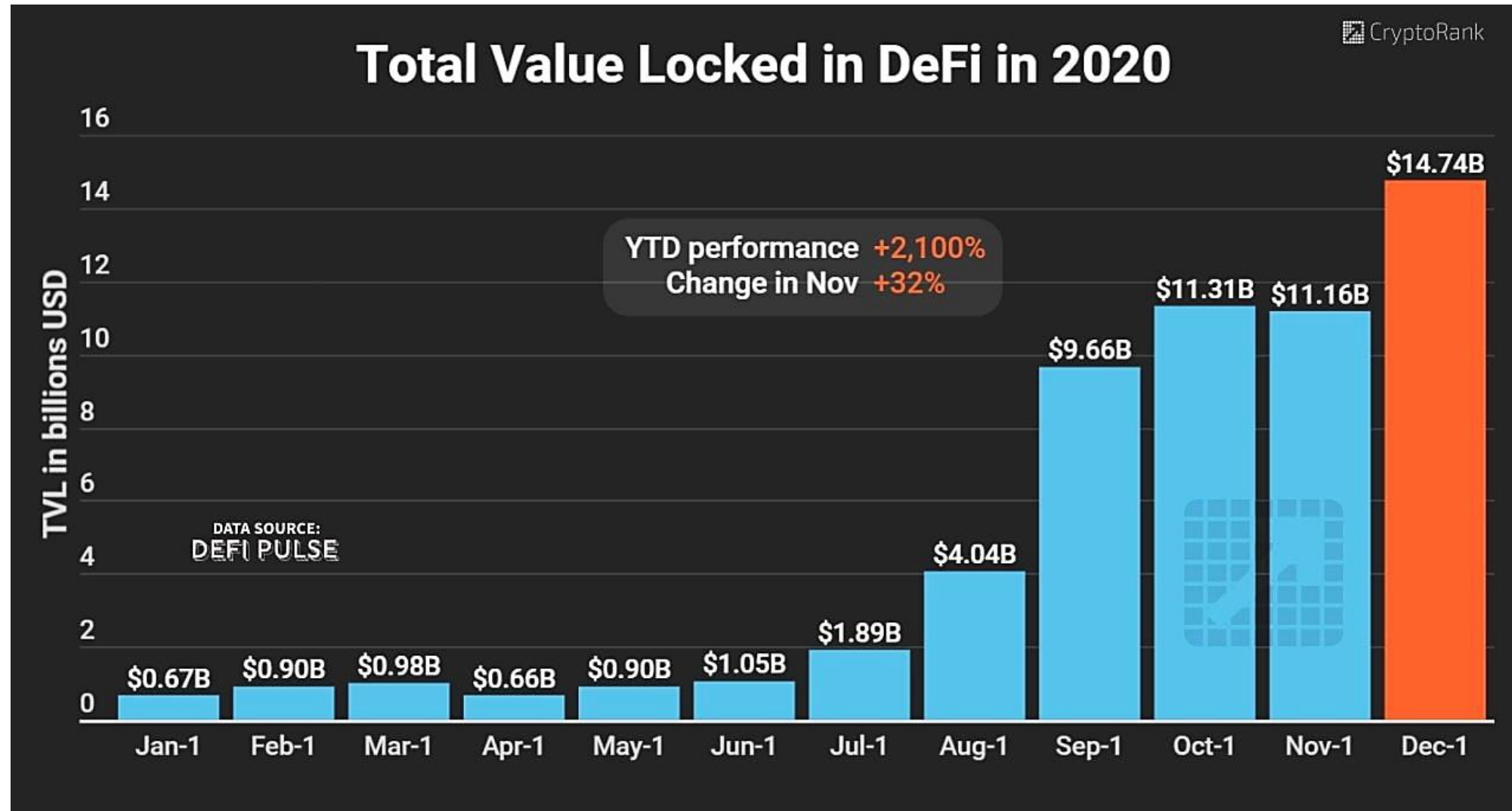


Asset Tokenization



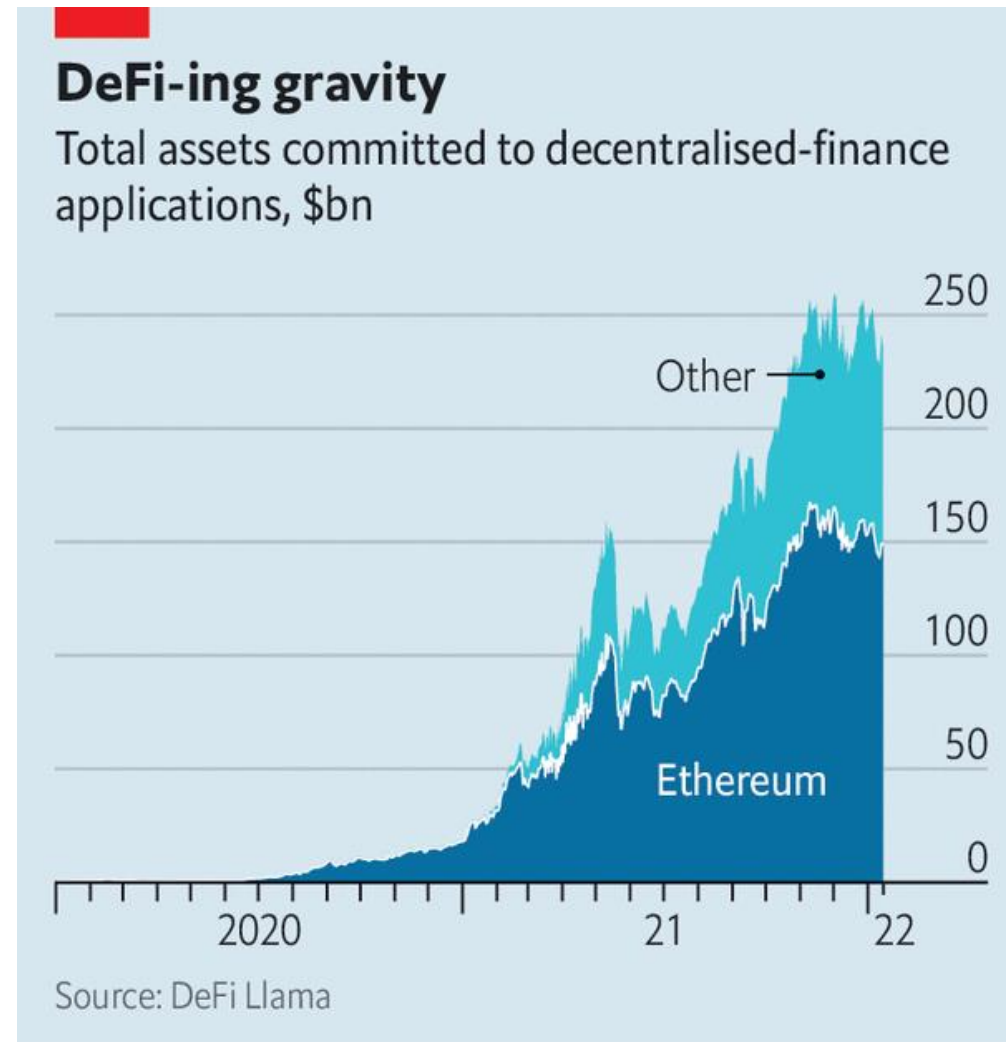
Image Sources: *Why Your Organisation Needs to Tokenize Their Tradeable Assets Using Blockchain*, Okaformbah, Oct. 11, 2019; *'DeFi' Movement Promises High Interest But High Risk*, Financial Times.

2020: The Year of DeFi



Source: Total Value Locked in DeFi Increased by 32% in November - CryptoRank News

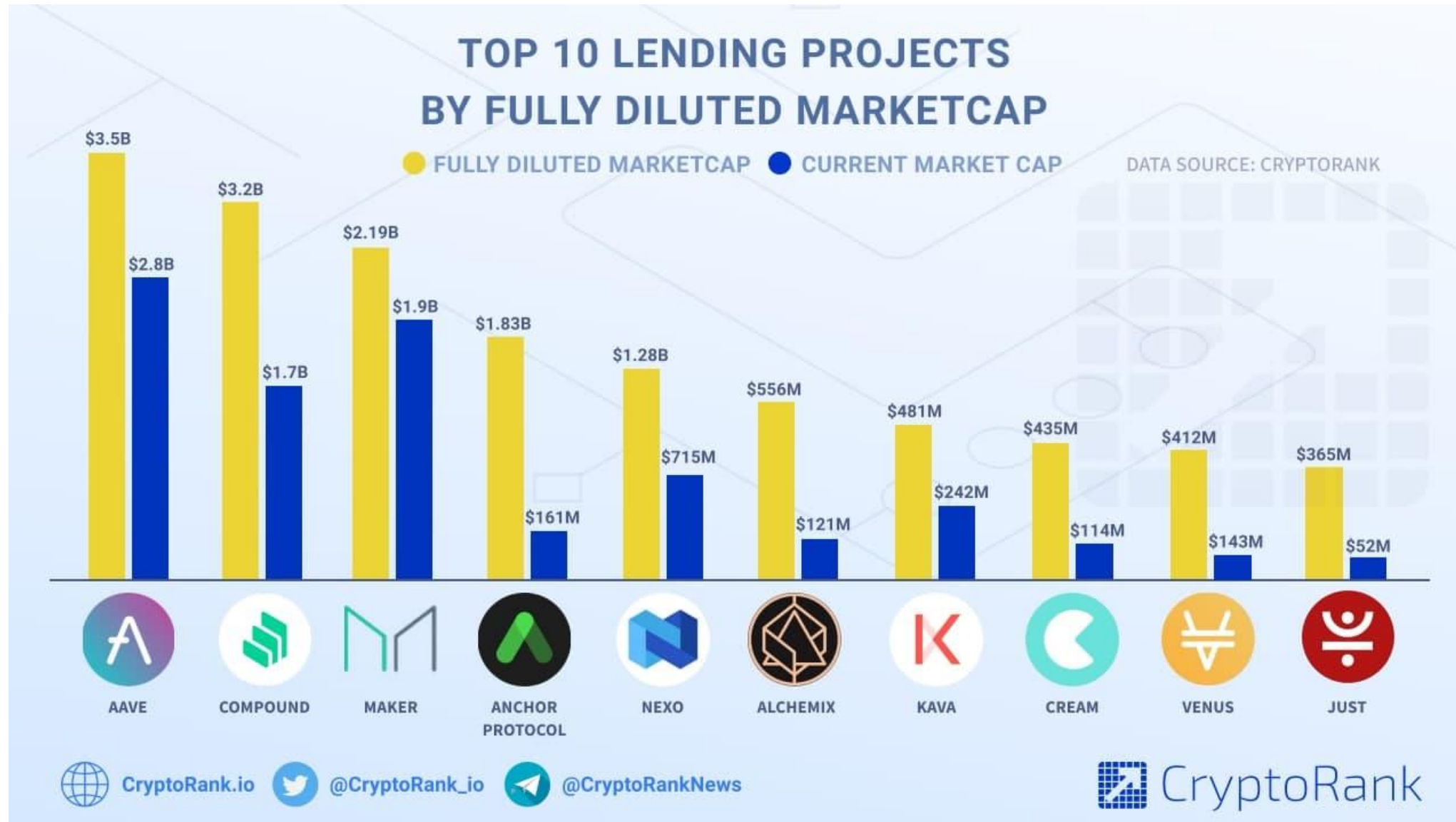
But 2021 Was the True Breakout Year....



The Economist

Source: The race to dominate the DeFi ecosystem is on | The Economist

Top DeFi Lending Projects





Source: Top 10 DEXs by TVL Growth in June - Cryptorank News

Tokenization and Tokenomics

- Fundraising for a Crypto Startup vs. a Traditional Startup
- Investors & Fundraising Options:
 - Initial Coin Offerings (ICOs) – Offshore and DAOs
 - Simple Agreement for Future Equity (SAFE) + Warrants
 - Simple Agreement for Future Tokens (SAFTs)
 - Regulation Crowdfunding/Regulation A/A+ Offerings
 - Regulation D Private Placements/Regulation S Offshore
- Offshore Vehicles – Cayman, BVI, Gibraltar, Swiss
- Stages of Token sales- Pre-Seed, Seed, Private, IDO
- How to Bring Cash Back Onshore?



- Are DEXs securities exchanges?
 - Unclear, but the SEC has proposed to amend the definition of “exchange” under 34 Act Rule 3b-16 to include communication protocol systems (January 26, 2022), presumably to target unregistered peer-to-peer exchanges
- Are tokens securities?
 - Unclear, but a recent settlement expands the traditional scope of “securities” regulation
 - “Use case” argument is not dead, but it’s difficult to control investor intent, especially if the token is listed
- Are DeFi liquidity providers considered lenders?
 - The traditional definition of “money” in lending licensing and usury statutes has excluded crypto assets, but this could change
 - Asset-backed securities?
- NY Bitlicense – difficult to obtain, but new DFS leadership has not tipped its hand

- SEC Charges Former Coinbase Manager, Two Others in Crypto Asset Insider Trading Action
- Implicit in charges is that Coinbase acts as an exchange for the trading of securities
 - Names 9 tokens that it believes are securities
 - Coinbase vehemently denies that it hosts an exchange for securities
- "We are not concerned with labels, but rather the economic realities of an offering," said Gurbir S. Grewal, Director of the SEC's Division of Enforcement. "In this case, those realities affirm that a number of the crypto assets at issue were securities, and, as alleged, the defendants engaged in typical insider trading ahead of their listing on Coinbase. Rest assured, we'll continue to ensure a level playing field for investors, regardless of the label placed on the securities involved."

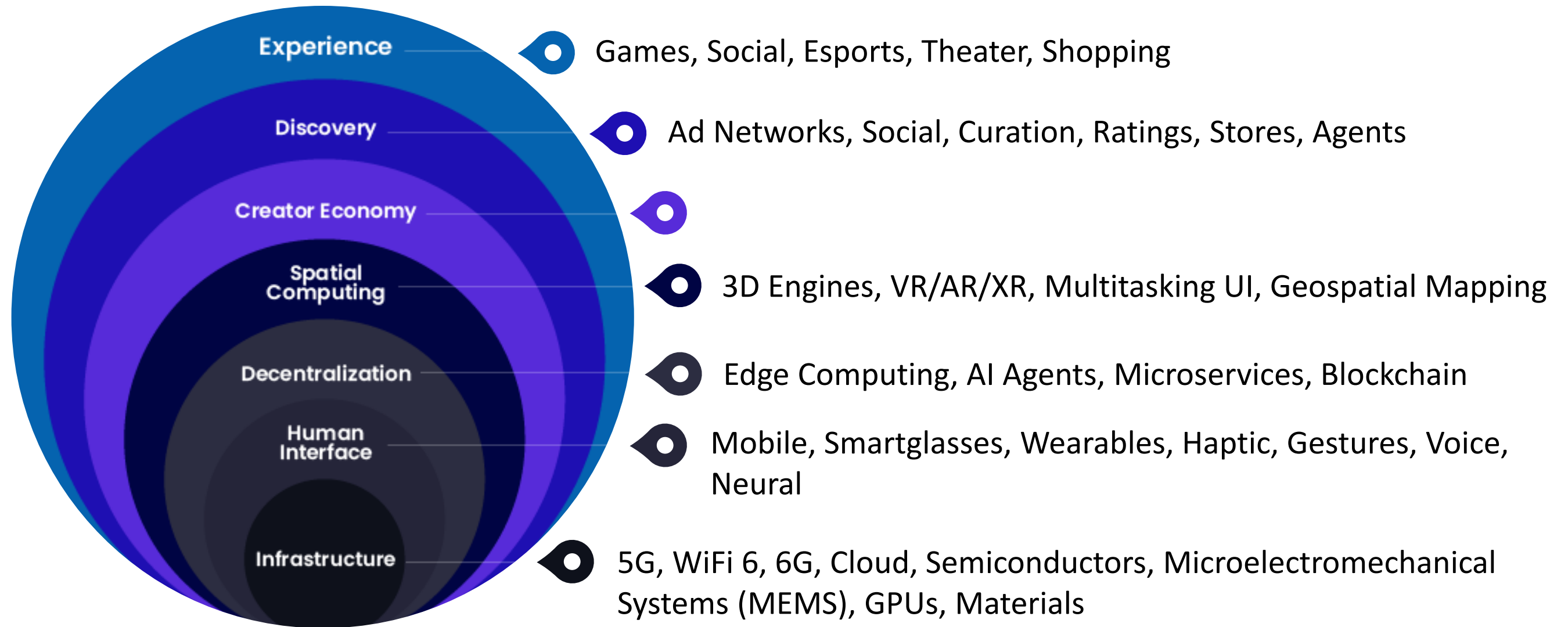
- DAOs are decentralized autonomous organizations.
- The organization issues governance tokens to members of its community.
- The tokens are governed by smart contracts.
- The community governs the organization through voting without any traditional concept of a manager or board of directors (decentralized control).
- The organization as a corporate entity does need to be formed in a traditional corporate manner; a semi-autonomous DAO is created and used until the community is large enough.
- Token holders are treated like equity holders under most state corporate laws and U.S. securities laws, leading to many DAOs being formed outside of the United States.
- Most states treat token holders like general partners; Wyoming is currently the only state that treats DAOs like LLCs, which limits liability to the token holders.



- NFTs are non-fungible tokens.
- NFTs are a specific kind of crypto asset that is unique; this unique aspect makes NFTs distinct and different from tokens that are used as currency, such as ETH or Bitcoin.
- NFTs provide the ability to authenticate artwork, songs, real estate, pets, etc.
- NFTs are also often used as rewards in games and for replacement of traditional trading cards (NBA Top Shot).
- The purchase and sale of NFTs are governed by smart contracts.
- NFTs are also used in DeFi as an asset conveyance tool
- NFTs raise issues related to IP ownership: What exactly is being purchased, and what rights come with that purchase?

Transactions, Emerging Platforms and IP

The Seven Layers of the Metaverse



Source: *Building the Metaverse*, Jon Radoff (Metaverse 101: Understanding the Seven Layers of the Metaverse–Holonext)

Centralization

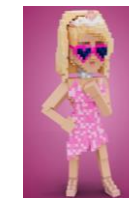
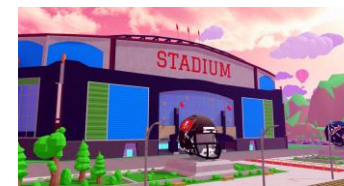
- Walled gardens
- Digital twins
- Accountability

Decentralization

- Blockchain infrastructure
- Open source
- Anonymity

Early Movers

- **Travis Scott's** concert inside of Fortnite in 2020.
- **Snoop Dogg** entered in Dec. 2021 in "The Sandbox" metaverse with his "Snoopverse" LANDs sale.
 - The sale included 122 LANDs, 67 premium LANDs along with exclusive NFTs, and three small estates.
- **NFL:** In February, the NFL was the first official major sports league to offer a persistent experience on Roblox. The NFL tapped into Roblox's nearly 50 million daily active users with its launch of NFL Tycoon, a metaverse activation that offered fans the opportunity to build custom stadiums and teams while competing against other fans in a simulator.
 - NFL Tycoon was produced in partnership with our client MELON, a metaverse development studio.
- **Paris Hilton:** Our client Paris Hilton announced her partnership with The Sandbox in early March.



Early Impact

- **Travis Scott** made over \$20 million in revenue.
- **Snoop's** sale brought in around \$14 million worth of revenue on the very first day, and Sandbox's token "SAND" gained 40% after his partnership.
- The **Roblox stock** is forecast to generate returns of 57% over the coming year.
- SAND token jumped 8% following the news of **Paris'** partnership.

Metaverse Land Grab

- Real estate sales on the “Big Four” metaverse platforms topped \$500 million in 2021 and are **projected to reach nearly \$1 billion this year**, according to investors and analytics firms.
- Some argue that land value in the metaverse will be determined by what owners do with a property—like designing a popular attraction, museum or feature—since teleportation is possible, while others say that location is everything.
- Many believe the biggest opportunity in metaverse land is commercial—renting space and hosting events for companies looking to advertise to a younger digital audience.

“Big Four” include Sandbox, Decentraland, Cryptovoxels and Somnium.



Source: Metaverse real estate sales top \$500 million, MetaMetric Solutions says (cnbc.com)



- **Opportunity for the NFL:** Engage the next generation of NFL football fans in the metaverse, and stake claim as the first official major sports league to offer a persistent experience on Roblox, where nearly 50 million users are connected daily.
- **Role of our client Melon:** Serve as the metaverse development studio responsible for the creation of NFL Tycoon, a new Roblox experience that engages fans in interactive NFL-themed gameplay and offers a virtual hangout destination with activations tied to league events.

More opportunities like this partnership are on the virtual horizon...

Case Study: AEG Presents Launches FTX and Coachella NFT Series

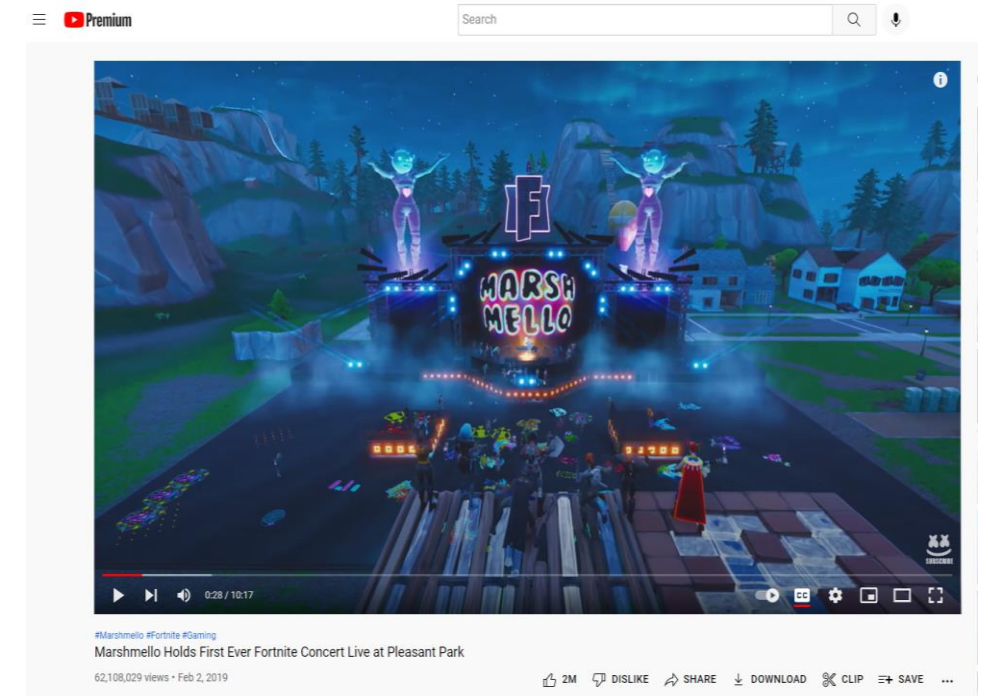
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- **The deal:** A Manatt team including professionals from our blockchain/cryptocurrency, entertainment and privacy and data security practices represented AEG Presents, the owner and operator of the Coachella Valley Music & Arts Festival, in establishing a long-term partnership with FTX, a U.S.-regulated cryptocurrency exchange, for the sale and trading of festival-themed NFTs.
- **The details and significance:** Coachella's partnership with FTX begins with the launch of the Coachella Collectibles series—built on Solana, an eco-friendly blockchain. The first NFT within the collection known as the Coachella Keys Collection consists of 10 one-of-one lifetime transferable passes and marks the first time the festival has ever made lifetime passes available. In addition, Coachella will also launch two limited-edition NFTs named the Desert Reflections Collection and the Sights and Sounds Collection.



Addressing Litigation Risk

- Metaverse games like Fortnite, Decentraland, The Sandbox, Cryptovoxels, Pokemon, and Facebook's metaverse are hosting virtual concerts, fashion shows, movie premieres and more.
- IP issues can arise in any number of ways as users buy and interact with products and protected works in the Metaverse.
- As with other new technologies, the question becomes: is the existing framework for IP enforcement and litigation sufficiently elastic to encompass the new technology?



- **Trademark litigation in the Second and Ninth Circuits involving videogames may provide insight into how courts approach IP issues in the Metaverse**
- **Applying the Lanham Act to artistic/expressive works:**
 - Balancing the “public interest in avoiding consumer confusion” against the “public interest in free expression.” *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989).
- **First Amendment arguments have typically carried great weight**

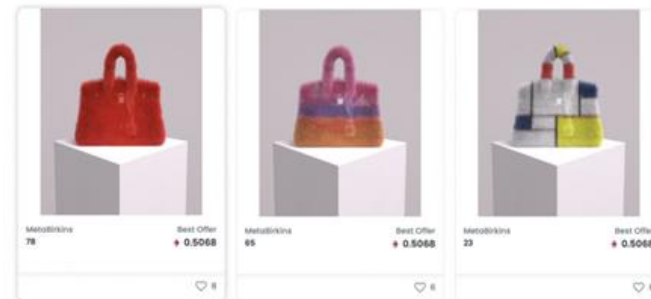
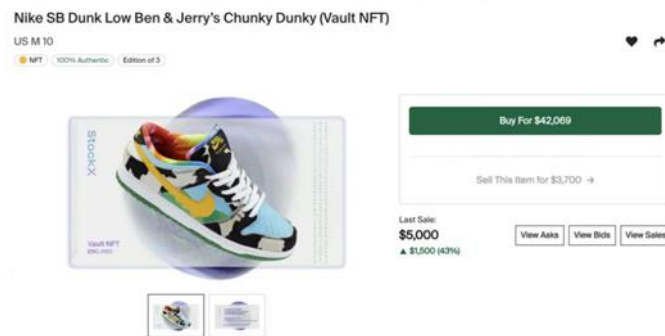
Notable Videogame Cases and What They Tell Us


- Evoking realism as artistic relevance
 - *AM General L.L.C. v. Activision Blizzard, Inc.*, 450 F.Supp.3d 467 (S.D.N.Y 2020)
 - ◆ “Bridging the gap” to the Metaverse market
 - *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235 (9th Cir. 2013)
- Prominence of allegedly infringing elements
 - *E.S.S. Entertainment 2000, Inc. v. Rock Star Videos, Inc.*, 547 F.3d 1095 (9th Cir. 2008)
 - *Elec. Arts, Inc. v. Textron Inc.*, No. C 12-00118 WHA, 2012 WL 3042668 (N.D. Cal. July 25, 2012)





IP-Related NFT Litigation: Everything Old Is New Again


- Litigation involving NFTs provides another glimpse into how courts may approach IP issues in the Metaverse
- Trademark and copyright cases involving NFTs: new technologies but familiar arguments
 - Nike sneakers, MetaBirkins, Bored Apes, and “Pulp Fiction”
- Infringing products and fraudulent transactions on NFT markets







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