

Susannah Torpey Speaks at 2022 Antitrust West Coast Conference

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Susannah Torpey, co-chair of Winston's Technology Antitrust Group, spoke at the Comp Law Conference on May 12, on a panel titled "How Will Competition Play Out in Web 3.0?"

Web 3.0 is the third version of the internet, which builds on blockchain technology, decentralization, machine learning, cryptocurrencies, non-fungible tokens (NFTs), and decentralized autonomous organizations (DAOs).

Susannah and Val Bercovici, CEO of CLICK2NFT, discussed tech and antitrust issues surrounding emerging technologies relating to Web 3.0 and their impact on competition.

Key Takeaways

- The decentralized and automated nature of web 3.0 is already disrupting markets and putting pressure on the data consumption monetization models of large tech companies. Web 3.0 threatens to disintermediate customers from companies that have enjoyed serving as gatekeepers in the 2.0 world.
- At the same time, users are starting to enjoy anonymizing, controlling and monetizing their own data, access to competitors' customers and suppliers on the same public blockchains are changing the way companies compete for these customers as well as for suppliers, which is intensifying competition and shifting users and liquidity across competitors faster than ever before.
- Permissionless blockchains can enable "Vampire Attacks" in which up and coming competitors can challenge an incumbent and shift users and liquidity virtually overnight, as in the cases of SushiSwap v. Uniswap and Looksrare v. OpenSea.
- Competition across metaverses is also blurring the line between competitors and collaborators with complex relationships, such as those between fashion, tech, and gaming.
- 3.0 applications can be coded very differently and raise different antitrust risks depending on how they're set up. 3.0 applications using smart contracts, DAOs, or NFTs may have protocols that are automated and may even rely on approvals from anonymous third parties, which means they can be harder to change or even dismantle once set in motion.

- In house counsel need to get antitrust counsel working with tech developers early on to make sure you are mitigating antitrust risks from the start.
- DAOs or NFTs using smart contracts should have a white paper to explain how the code is meant to work. That should be the latest point to do an antitrust audit of the product.
- The blockchain backbone of the Web 3.0 environment is going to put more pressure on incumbents as consumers come to expect the ability to be able to use their digital assets like NFTs that they buy in one game or metaverse and put it in their digital wallet to be able to use it in other environments.
- We can expect to see more antitrust disputes focused on conduct cutting off or degrading interoperability by companies that are poised to lose from the shift to 3.0 cross-platform ecosystems, for example by challenging rules that prohibits access to cloud gaming.
- We are also watching for the expanded application of Section 5 of the FTC Act to complex cross-market disputes in the tech space, including as incumbents seek to use gatekeeping products to set rules for digital payment architectures and data portability in metaverses.

Learn more about this event [here](#).

Read more about Winston & Strawn's antitrust practice [here](#).

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Susannah Torpey