



Retail Agility Virtual World Order

THE METAVERSE, DIGITAL PAYMENTS
AND DATA PROTECTION

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Introduction

For our latest research among the UK's top 100 retailers, we've looked at digitalisation and how retailers are responding to some of the biggest trends in consumer-facing technology, including:

- the rise of the **metaverse**;
- the impact of digitalisation on different payment methods, including the growth of 'buy now, pay later' (BNPL); and
- the need to protect the **personal data** that underpins all of this.

While the metaverse was largely considered irrelevant to most retailers when it was first conceived, millions of consumers now engage with brands in this way, particularly in the fashion industry. As a result, we discovered that more retailers – beyond just fashion – now want to be there.

The metaverse can be used for a variety of reasons, from loyalty to sales and market research, but our research also reveals a mismatch between how consumers and retailers currently envisage using it. This is a risk, as getting this wrong could damage a retailer's brand and reputation in the metaverse and the real world.



Our research reveals a mismatch between how consumers and retailers envisage using the metaverse.

Additionally, just because it's an experiment doesn't mean laws and regulations don't apply. There are myriad legal risks in the metaverse, from IP protection to cybersecurity and data privacy, not to mention a high degree of uncertainty over how existing laws and regulations apply. Over time, more retailers are becoming convinced of the benefits of being present in the metaverse, but retailers need to know they might not be protected in the ways they think.

Increasing digitalisation has also led to different payment methods being offered, from cryptocurrency to rental schemes and credit options, and this report looks specifically at the growing popularity and prevalence of BNPL. As well as ensuring a seamless transaction process, retailers need to make sure they're doing enough due diligence before extending credit to consumers, especially in the current economic climate and as the government continues to announce new regulatory measures.

Data fundamentally underpins retailers' ability to operate in the current and future digital landscapes. However, as the range of digital channels and functionality grows, managing vast amounts of data becomes harder, particularly in the context of maintaining organisational focus on data privacy and management and making sure it doesn't become merely a tick-box exercise.

In the current economic climate, it's important for retailers to show they understand and are listening to what consumers are looking for. Retailers can rarely afford to ignore new trends; success will lie in finding ways to minimise the uncertainty that comes with new technologies and pinpointing the opportunities.



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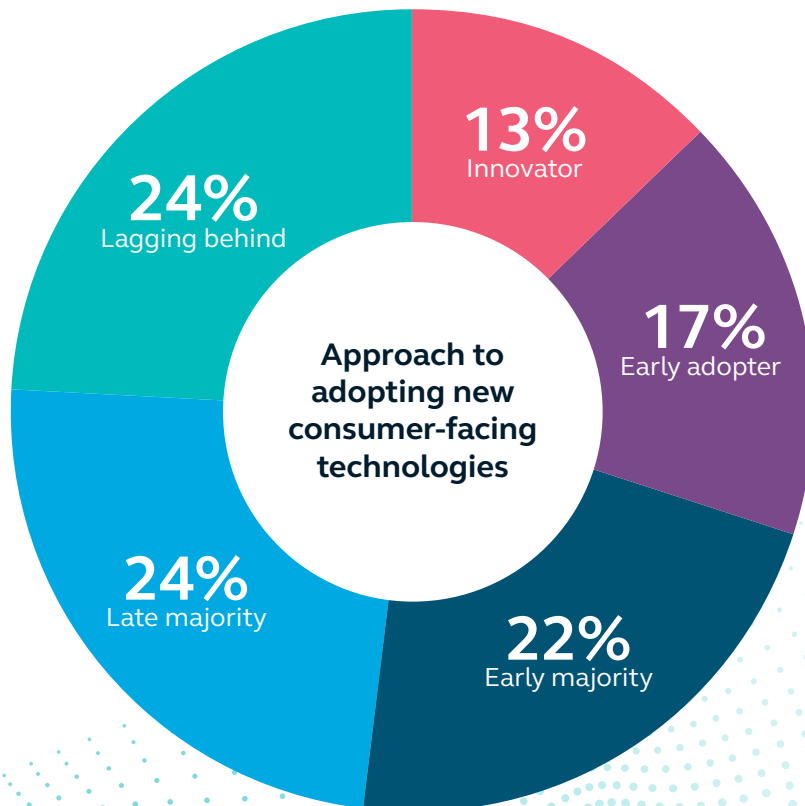
Meta mismatch

Retailers underestimate importance of experiences in the metaverse

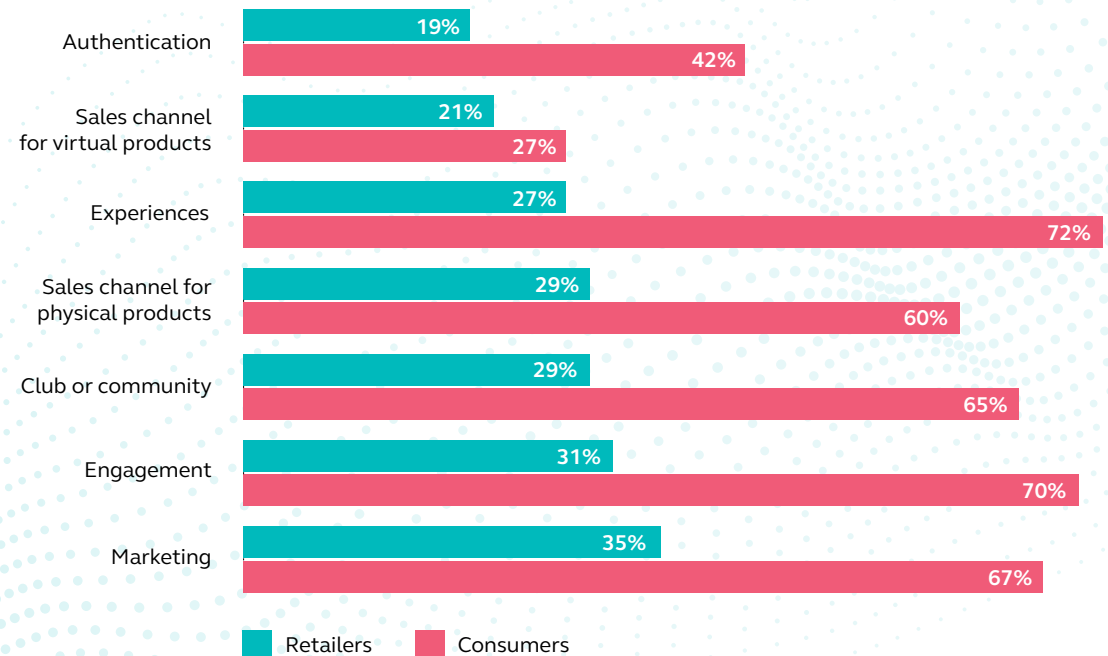
Almost a third (30%) of retailers would describe themselves as an “innovator” or “early adopter” when it comes to adopting new consumer-facing technologies, showing just how critical digitalisation is to brand relevance, awareness and value.

As a result, more than one in ten (12%) are already using the metaverse, rising to 14% of lifestyle and leisure and 13% of fashion and beauty brands. Around two fifths (39%) of retailers plan to use the metaverse in the future, rising to half (52%) of lifestyle and leisure brands.

However, retailers are over-estimating the importance of marketing and underestimating the importance of experiences, compared to how consumers see themselves using the metaverse. This is important, because getting this wrong could damage how consumers view a retailer's brand and its reputation in the metaverse, which can also cause damage across its other channels.



How will you use the metaverse in the future?



Perran Jervis, head of retail and consumer goods at TLT, says: “Retailers have been trying to create better in-store experiences for some time. The metaverse presents an opportunity to think beyond the limitations you find in other channels when engaging with consumers, but it requires an entirely different approach because the retailer creates the whole domain and they need to do this within the law. If retailers get this right, it could align online and offline in a more immersive way than ever before. Get it wrong, and the errors could track across to the brand and other sales channels, damaging the business. It’s the same principle that applies to any new channel.”

Today, retailers are using the metaverse for engagement (12%), marketing (12%), experiences (9%) and clubs and communities (8%), with slightly fewer using it to sell physical (7%) or digital (3%) products and only one of the top 100 (1%) using it for authentication.

Personal data will be crucial to retailers’ metaverse strategies, with more than half seeing the potential to use it for targeted advertising (54%) and personalised experiences (51%). Ed Hayes, partner at TLT, says: “Retailers need to be careful of mistakenly thinking normal data protection rules don’t apply to the metaverse. For now, they apply just as much in virtual

worlds as in the real world, and anything targeted or personalised carries an extra regulatory burden.

“The sands may be shifting, though, with recent political announcements suggesting the UK could see a drastic cull of data protection law. If that happens, retailers will have a balancing act to play – assessing whether the personalisation and targeting opportunities that lighter touch regulation open up are counter-productive if they are off-putting to consumers.”

The most compelling uses of personal data in the metaverse



Retailers rightly identify cyber security (54%) and data protection (43%) as two of the biggest legal risks in the metaverse, meaning the correct policies and handling procedures need to be in place. Harassment/Abuse is the overriding concern (62%), while others include IP infringement (54%), cross-jurisdictional issues (49%) and transparency and mis-selling (45%).

When it comes to the impact of the metaverse on the environment, retailers are divided: 20% believe the metaverse is mostly part of the solution to environmental issues, for example by reducing demand for physical goods, while 18% say it is mostly part of the problem. This would be due to the energy required to maintain a large number of servers across the world. Almost two thirds (62%) aren't sure, but the long-term impact does need to be considered in a world where energy sources are scarce.

Retailers are also divided over the long-term importance of the metaverse, even though it may be too early to dismiss it outright. Almost two thirds (61%) are not currently planning to use it, and 85% don't think it will ever be as important as physical stores, retailer websites, online marketplaces, social media or loyalty and incentive schemes.

Viewpoint



Laura Ganoza
Partner at
Foley & Lardner,
Co-Chair of Fashion Apparel &
Beauty Group (Foley FAB)

Retail has become less about going somewhere to buy something and more about seeking experiences while shopping. That's why the metaverse and NFTs appeal to shoppers – because they are another form of engagement and brand loyalty. As with any new technology, this will be a learning curve for retailers. Those currently leading the field recognise a need for brand authenticity across their channels and understand that this is what consumers respond well to, particularly younger shoppers.

They also recognise that for younger generations, the line between real and digital worlds is disappearing, and tomorrow's consumers will stop differentiating between them altogether.

These new technologies are also beneficial because they allow retailers to reach new audiences. For example, we now see gamers engaging with brands like Gucci and Givenchy purely because of their presence in Roblox. Retailers will however need to be mindful of their IP portfolio and scope of protection. As with any new platform, retailers need to take both an offensive and defensive approach. For example, they need to be checking what protection they currently have and whether they need to expand. Is "clothing" enough, or should they also seek trademark protection for "digital clothing"? Defensively, they need to understand what potential infringers are doing in order to combat them.

Unfortunately, given the anonymity permitted on many platforms, it can sometimes be hard to identify people in the metaverse, making enforcement difficult. Added to this, some US states are preparing to launch data privacy and protection laws, which will add even greater complexity to existing data-related questions and issues for retailers entering the metaverse or expanding their digital footprint.

Some people are saying the metaverse bubble will burst, but I think it's likely to morph into something new and permanent, as with the internet two decades ago. While there are still questions over which rules apply, we should see some substantive rulings on the law and the scope of protection in the next year – so this much-needed clarity is coming quite quickly.

However, lifestyle and leisure brands are far more likely to describe themselves as an “innovator” (17%) and to already be using the metaverse than any other category, and the majority (55%) are more certain than sceptical about the metaverse’s future importance to retailers.



55%

of lifestyle and leisure brands are certain that the metaverse will be important for retailers

Dan Read, partner at TLT, says: “Just as people had their doubts about the importance of online sales channels, it will be interesting to see if and how retailers’ opinions about the metaverse shift over time. Retailers may want to use this as a tool to increase and diversify traditional sales, but they

shouldn’t underestimate the importance of technologies like the metaverse in how consumers see a retailer brand and the buying decisions they make.

“One thing’s for sure: there are a wide variety of potential legal risks in the metaverse that will require careful consideration. What can feel like a fun experiment may quickly land a business in hot water with regulators, businesses and consumers.”

Perran Jarvis adds: “Given consumer demand for experiences in the metaverse, it’s hardly surprising that lifestyle and leisure brands are embracing it more than others. Perhaps other retailers should start behaving more like these brands in order to stay relevant on digital channels. Retailers would first need to create a lifestyle proposition and a brand identity that goes beyond the product, linking every purchase to a lifestyle decision. It wouldn’t be a huge step from how many retailers are already promoting their brands, but it has cost implications, takes time and needs to comply with existing legal frameworks, which were not created for the metaverse.”

Viewpoint



Karen Johnson

National Head of Retail and Wholesale, Barclays Corporate Banking

Understanding what customers want is imperative. Our own research similarly identifies some discrepancy between what retailers are investing in, and what customers are actually calling for. Essentially retailers currently have much more

knowledge about how consumers can benefit from new and innovative digital services than the consumers themselves – how this is communicated will be key to consumer engagement.

Another key area of focus has got to be data, as this will become more important than ever before as new technologies like the metaverse and NFTs evolve. I agree that retailers could find it beneficial to explore this area further and make it a top organisational priority. Compared to other industries, there’s a risk that retailers are not getting the most out of their data.

NFTs

The hype around non-fungible tokens (NFTs) – unique crypto assets where authenticity and ownership are verified on a blockchain and can be used in the metaverse – is becoming increasingly hard to ignore. Almost half (45%) of retailers plan to use them in the future (16% use them today), and two thirds (63%) say they fully or partly understand them. We’ve seen brands using them for a wide variety of reasons, such as:

- Authentication of physical products
- Exclusive digital collections and collectables
- Gaming e.g. dressing avatars
- Granting licences to customise a digital branded product
- Hybrid sales (digital versions of exclusive physical collections)
- Charitable fundraising

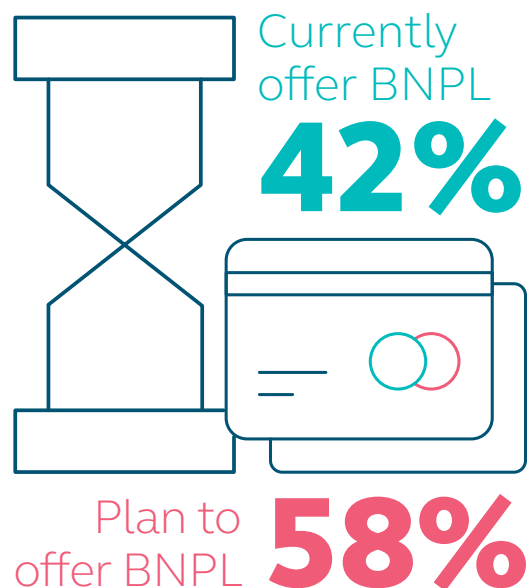
There are many legal issues to consider, including the use of smart contracts to ensure long-term gains from secondary markets; cyber security risks; and regulatory compliance, including regarding rules on misleading adverts.

New ways to pay

More retailers plan to offer 'buy now, pay later' despite cost of living crisis

Increasing digitalisation has led to an increase in novel payment methods, with 'buy now, pay later' (BNPL) growing in popularity and prevalence in recent years – largely as a result of the squeezed consumer wallet and cashflow issues. While allowing customers to buy goods on credit isn't new, BNPL now applies to a great number of online products and is quicker and easier to use, creating risks for retailers, especially during the cost of living crisis and tightening consumer regulation.

Despite these risks, more retailers are planning to offer BNPL in the future (58%) than currently do today (42%) – in order to make products more affordable, but also to stay relevant as more people look for this option and the apps evolve into marketplaces in themselves.



The biggest issues retailers have faced with BNPL include missed payments (24%), a lack of integration with other systems (22%), complexity of set-up and integration (17%) and a lack of useful data (15%). The majority (64%) of retailers say they are worried about consumers getting into too much debt.



The majority (59%) of retailers also believe BNPL should be better regulated, which is starting to happen.

Popular ways of managing these issues include being selective about which services to offer (21%), working with payment providers to configure lending criteria (18%) and improving contracts with BNPL providers (15%). The majority (59%) of retailers also believe BNPL should be better regulated, which is starting to happen following the Woolard Review and the government's subsequent consultation on the regulation of non-regulated BNPL in October 2021. The government is expected to publish and consult on draft legislation to implement its proposals, with secondary legislation anticipated to be made mid-2023.

Alex Williamson, partner at TLT, says: "Now more than ever, retailers need to be creative in making products more affordable for the cost-conscious consumer. A lot of people see BNPL as a useful way of spreading their costs out, as opposed to getting into unmanageable debt, and some may choose to shop only where this is an option. However, this needs to be considered in context, and retailers need to make sure they've understood the risks and likewise come up with creative ways of managing them, whether that's vis-à-vis their suppliers or customers."

Protecting data

Data privacy and protection has fallen down retailers' list of organisational priorities

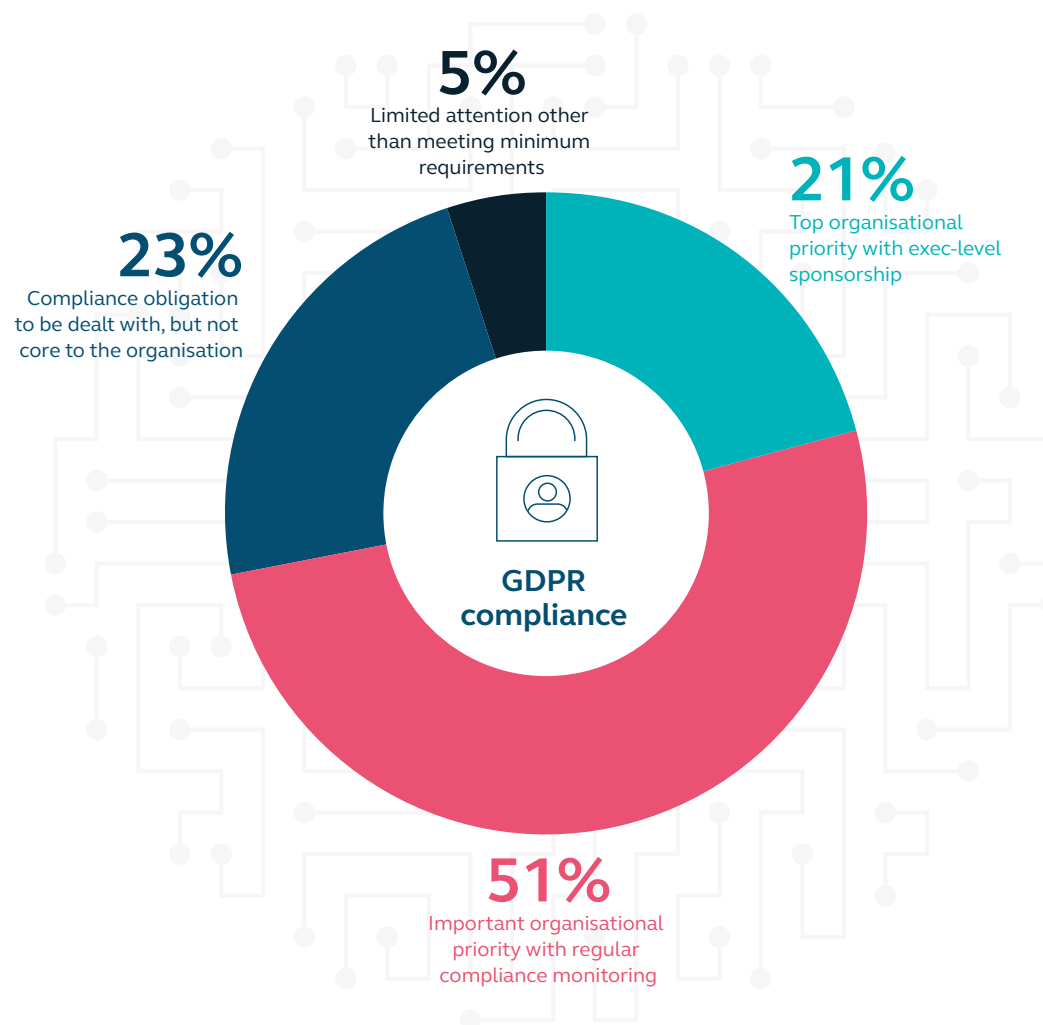
As the number of digital technologies grows, so too does the volume of data and therefore the burden of complying with data privacy and protection regulation.

While this was undoubtedly a top organisational priority when the General Data Protection Regulation (GDPR) came into force more than four years ago, and retailers still acknowledge its importance, only a fifth (21%) say GDPR compliance is a top organisational priority with exec-level sponsorship, suggesting that other competing pressures can take precedence.

The main areas requiring improvement are:

- Governance controls on the use of personal data (36%)
- Implementation of the UK's international data transfer agreement (27%)
- Assessment of international data transfers (25%)
- Data breach management and response (25%)
- Staff training (24%)

Read [Unsettled Status: an update on international data transfer law](#) produced by TLT and our alliance partners Holla (the Netherlands) and GSJ (Belgium)



However, retailers identify a number of barriers including a lack of time (44%), GDPR fatigue (37%), a lack of budget (26%) and a lack of expertise (26%). Despite acknowledging there is room for improvement, the majority (60%) of retailers say their investment in data protection is staying the same, while 28% say it's going up and 12% say it's going down.

Ed Hayes says: "When it comes to data privacy and protection, retailers are running a significant risk and yet few can afford for things to go wrong. Retailers need to review their risk exposure – particularly in line with recent changes to international data transfer law – review their approach, and identify any opportunities to bring that risk down to more acceptable levels."



When it comes to data privacy and protection, retailers are running a significant risk and yet few can afford for things to go wrong.

Investment in data protection



Conclusion

The history books suggest that we've been too quick to dismiss era-defining technologies – e-commerce was initially thought to be a minor channel.

While it remains to be seen if the metaverse deserves the title of “era-defining”, early experimentation suggests it will be important regardless of where it sits in the hierarchy of technologies.

The types of brands leading the race also suggests there may be opportunities for retailers that haven't traditionally acted like a lifestyle brand to re-position themselves as such, in order to capitalise on the millions of consumers spending time and money in virtual worlds.

There are still a lot of unanswered questions that are unlikely to be answered any time soon, and there is no dedicated set of rules that apply to the metaverse. This means retailers will need to gather their own intelligence to decide if, when and how they're going to use it, either as part of internal research and development or consumer engagement.

As well as helping retailers to stay relevant, technology can help retailers to find new ways of supporting customers – for example through the cost of living crisis. BNPL is already a common feature across the industry, and retailers will need to make sure they've considered and can justify their approach and that their supplier contracts aren't leaving them exposed to unnecessary risk.



As well as helping retailers to stay relevant, technology can help retailers to find new ways of supporting customers.

As there is already a mismatch between retailers' and consumers' ideas about what the metaverse is for, retailers will need to be careful about how they approach this and their handling of personal data. As data privacy and protection law continues to change, retailers will be fair warned to check their agreements and processes and make any necessary improvements to allow for different usage and keep ahead of a developing framework of technology and the regulation that follows it.



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For what comes next



We act for more major retailers than any other UK law firm and are ranked as a top retail law firm by Chambers UK and Legal 500.



Our clients represent over 15,000 stores, one million employees and £100 billion of retail sales.



Our national retail team has an in-depth understanding of the industry, offering advice in context and solutions that work. We provide strategic advice on major projects, as well as support for in-house teams on day-to-day matters.



We also support retailers through our retail-specific training programme, seminars, e-alerts, industry reports, risk reports and are actively involved in retail industry groups.

To find out more visit tlt.com/retail

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Research methodology

To gain a sector and category view of the retail sector, independent research was conducted by GlobalData on behalf of TLT LLP.

GlobalData interviewed 100 leading UK retailers in September 2022. In all cases, interviews were carried out with senior management. The sample was representative of sectors within the retail space including: food and

grocery; fashion and beauty; home sectors; and lifestyle and leisure.

The consumer data is based on a GlobalData survey of 2,001 consumers in the USA in February 2022.

All charts, data and statistics featured in this report are the product of the research. All rights reserved, November 2022.

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